Supreme Court, U.S
FILED

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No. 10-614

The Supreme Court of the United States

Zhuang Li Cai,

Petitioner,

v.

M.D Jaiml Uddin,

Respondent,

Petition For Writ of Certiorari

Zhuang Li Cai
Pro Se
9934 67rd, apt 1A
Forest hills, NY 11375

Questions presented

1. Is the Constitution and the Law protects private property?

2. Is everyone can **intentionally** use fence de minimis encroachment to occupy neighbor's land and declare is his land?

3. Why invader can use other people's land for free and the owner pays tax and cannot use?

4. Is the Constitution require owner provide to the court any thing other than prove the ownership of the land for get court order let the invader move out of owner's land?

5. Is Constitution say I need expertise law knowledge for get protection?

6. What is the nature function of a fence? Can you declare your property line is inside of other people's fence post?

7. What is the quantitative measure of de minimis? What is the nature of adverse possession?

8. Is invader can use fence de minimis encroachment to occupy other people's land then wait until the invader can perform adverse possession to legalize the ownership? Is it a legal land robbery method?

9. Is the de minimis more weight than the Constitution?

10. Is the court serve for truth, justice and fairness? Is any guide line for Judge to use ruling examples?

11. Is the United States Supreme Court protecting people's Constitution right?

List of Parties

Zhuang Li Cai – Petitioner
9934 67rd Apt 1A
Forest Hills, NY 11375
718 897 5751

v.

MD Jamil Uddin - Respondent

RICHARD N. GOLDEN, P.C.
Attorney for Respondent
118-35 Queens Boulevard, Suite 1220
Forest Hills, New York 11375
718 261 2600

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Opinions Below

The Queens Supreme Court finds "the posts to the fence extend beyond the property line." (Appendix page -41-)

The Appellate Division confirmed "the alleged encroachment onto appellant's property consisted of one or more fencepost intruding onto the property by approximately two inches." (Append page -43-)

But both courts insist it is de minimis encroachment and let Mr. Jamil's fence occupy my land. Both courts insist there is no evidence of damages.

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Constitution and Statutory Provisions Involved

Constitution: Bill of rights.

Private property should protect by Constitution and Statutory.

The property owner has the right to use the property not exclusively occupied by invader.

Declaration of independence said all men are created equal.

VI New York Jur 2nd, "Adjoining Landowner" section 119 page 757

§119 —Fences: Research References

West's Key Number Digest, Boundaries ~3(4)

A fence erected on a surveyed line shortly after the land has been surveyed may serve as a monument to control courses and distances or a subsequent survey after the stakes of the original survey have disappeared.

Where the premises have been bounded by a fence for many years, the law presumes that the fence is the true boundary, and will not disturb such a line, even where it does not correspond with the line of the premises as shown on the map according to which they were conveyed.[2]

In a boundary dispute, the fact that by taking a fence as the boundary the quantity of land would be the same as that specified in the
Defendant's chain of title is significant in determining the true line.[3]

[1] Holden v. Crolly, 153 AD 254, 138 N.Y.S 23(2d Dep't 1912).

Annotation References: Fence as factor in fixing location of boundary line--modern cases, 7 A.L.R. 4th 53

[2] McMahon v. Morse, 135 Misc 233,287 N.Y.S. '861 (Sup 1929).

As to the period of time adverse possession must be maintained in. order to ripen into title, see Adverse Possession and Prescription §§55,57

[3] Whitney v. Dudley, 40 NY S.2d 888(Sup 1943), judgment aff'd without opinion, 266 A.D. 1056, 45 NY.S 2d 725 (4th Dep't 1943)

Additional New York law in Appendix -15- to -35- when you feel need for evaluate the damages.

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Case Statement

In short:

Mr. Jamil's new fence intentionally crosses the property line by 2 inch. I cannot restore my fence.

Facts:

a. Both parties are private house owner.

b. Mr. Jamil's new fence post cross the property line 2+ inches. The Appendix page -60-,-61- Exhibit I (first post), -65- Exhibit N (last post) show both post cross (orange mark) 2+ inches.

c. Mr. Jamil is **intentionally** take down my fence build his new fence and **declare the new fence is in his land** (Appendix page -68- to -69- items 14, 17, 18, 19).

d. The nature function for fence is to declare land boundary and ownership. None can declare property inside of other's fence post.

e. The cost (<$2000) move fence post much less than Mr. Jamil claimed spending $4,300 in legal process (Appendix page -69-, item 20, 21,22).

!!Format note: A calculation error found. The cost is (<$1500) and the spending is $2,150. Detail calculation already in lower court file appendix -86- line 12, fact 2, -89- item 18, -101- last 3 lines)!!

f. Before Mr. Jamil build his new fence, both party signed **agreement the fence post not cross property line.**

1. Mr. Jamil builds his new house. We fight before the fence is up. The agreement (Appendix page -48- Exhibit A) is signed around the picture (Appendix page -57- Exhibit F) taken it clearly shows the edge of sidewalk. **The agreement is his fence post will NOT cross the property line.**

When he signs this agreement, he also **agrees on oral I can take his fence down if his fence posts cross the property line.**

2. When he try take down my fence front part (Appendix page -59-, Exhibit H) I called police (Appendix page -80-, item 4 line 5).

3. He refuse accept the survey which I got from building department (Appendix -49-,-50- Exhibit B). I hire one surveyor put property line stamp on the ground (Appendix -60- Exhibit I) and hire another surveyor do the new survey (Appendix -53- , -54- Exhibit D).

Mr. Jamil destroys the first property stamp (Pin) then I hire surveyor put on second times (Appendix -61- Exhibit J). Mr. Jamil destroys it again and paints a red cross (Appendix -62- Exhibit K).

4. His fence constructed by 4X4 inches posts with screw-mounted panel. Due to his fence occupy my 2 inch land I unable to restore my fence (Appendix -71- Exhibit B, -136- Exhibit D) unless his fence post move out of my land.

Please notice that his fence is not common fence. If it is common fence I will own 50% and I have right to say "NO". 6 feet high vinyl fence completely prevent me carry big item out of backyard.

5. He claims his fence is inside of his land. (Appendix -66- to -69-) provides court altered agreement (Appendix -70-) and a suspicious survey from Albert A. Bianco which is the only survey claim the property line is 2.5 feet from my house (Appendix -72- to -75-). His claim is false base on lower court findings.

The motivation for Mr. Jamil Uddin spends much higher cost to fight than simply move the fence posts is adverse possession (Appendix -79- item1). He is intentionally cross the property line. Note: Complete rebuild whole fence about $1000 labor, $510 posts, $1600 panels. Quote from 2 companies and Home Depot.

The fence post is inclusive component of fence. The fence function is declaring the boundary and ownership of the land. The adverse possession will legalize the ownership of that 2+ inch land. My 25.00 feet wide land will reduce to 24.83 feet.

6. I explain technically what the de minimis is. I also provide additional evidence of damage and statutory provisions (Appendix -20- item 7 and 8, -26- Fences). The lower court refuse accept the basic science and logic. The lower court insist the invader occupies neighbor's land and the owner cannot use his own land are not evidence of damages.

I request clarification for understand court decision but it denied. I do believe the clarification will overturn the decision (Appendix -23- line 26 to -31-).

My land occupied by Mr. Jamil for free and the lower court imposes the cost to my case! Where is the truth and Justice?

All new construct has to respect to the property line.

At this point everything is crystal clear. Only Mr. Jamil still tries to fool court of appeal by lying against existing court document. (Appendix -8- item 6, Appendix -39- item 13). His lawyer Mr.Golden does not deny any allegation only emphasis de minimis and no statutory (Appendix -13-, -97-).

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Reasons for Granting the Petition

In short:

Let Mr. Jamil's fence post continue to occupy my land is unconstitutional. I have right to restore my fence.

1. **The nature function of fence is to declare the boundary and ownership of the land.** Holden v. Crolly, 153 AD 254, 138 N.Y.S 23(2d Dep't 1912) and McMahon v. Morse, 135 Misc 233,287 N.Y.S. '861 (Sup 1929). You cannot declare your property line is inside of other people's fence post. Fence is exclusively takes the land.

Mr. Jamil's fence posts cross property line 2+ inches. He is physically takes that 2+ inch land for free and becomes practical land owner. The lower court decision let Mr. Jamil continue to occupy my land is unconstitutional.

The private property is protected by Constitution and law (e.g. Bill of the rights amendment 5). Even the government cannot take private property for free. That 2 inch is my land. I have the right to use it.

It is common sense. The owner has the usage right (Bill of the rights amendment 9). When you borrow a pen, you need ask permission. If the owner says NO, you cannot take the pen. You cannot say it is de minimis encroachment.

The Constitution does limit the property on size and value and does not ask prove of damage. The only thing needed is prove of owner ship. In fact fence invasion is a damage of ownership.

If invader exclusively occupies the owner land then it is unconstitutional. Even one fence post occupies my land is unconstitutional. How hard to move one fence post if it is truly only one post.

The United States Supreme Court system is the final place for people seek Constitution rights protection.

2. Intentional fence encroachment is no difference from street robbery. The invader knows where property line is and knows it against the owner wish. Invader knows what he is doing.

The exhibits of agreement and the photos are clearly indicates Mr. Jamil is intentionally cross the line. You can see how we fight start from clean sidewalk (2.6 feet away from my house) until complete fence. You can see how Mr. Jamil destroys the property stamps. Even I called police cannot stop him.

Recall the altered agreement (Appendix -70-). Mr. Jamil try fool the court the property line is in center of the retaining wall or curb. The retaining wall (my side is a curb) is 5.5 inch in my side and 2 or less inch in Mr. Jamil side (Appendix -64- Exhibit M, orange color is the property stamp). He knows what he is doing.

The reason I do not take down his fence immediate by force is **I think the court will support truth and justice.** I am master in science and engineer I know technically impossible to prove that 2+ inch land belong to Mr. Jamil.

Even base on Albert A. Bianco's survey (Appendix -72- to -75-, Exhibit C) Mr. Jamil still cross the property line by 1 inch. Mr. Albert A. Bianco is an engineer. He knows he cannot make a survey 2+ inch over but he do not know the trick he playing also impossible in measurement theory. (Appendix -83- item 7)

The second Mr. Jamil's survey (Appendix -76-,-77- Exhibit D) agrees with all my 4 surveys. My house is 2.6 feet away from the property line. That is why lower court confirms the encroachment is 2 inch. Mr. Jamil knows it before we go to the court.

Mr. Jamil is **intentional** use **new** fence encroachment **for declare land ownership** (Appendix -68-, item 12 to 19) He made his point several times very clearly his fence is complete in his property. (Appendix -68-, items 14, 17, 18, 19) He is intentional get free land from my side.

All my legal expenses are directly due to Mr. Jamil's encroachment. He should bear with the consequences of his action.

3. Allowing one private homeowner using fence de minimis method to encroach to another private homeowner's land is wrong. **The lower court decision impacts to all America homeowners.**

All American need aware of the court allows fence de minimis encroachment to their property. If I know I will use force take it down before it completed.

If you truly believe everyone created enquire you know every homeowner will have the right to use fence encroach to the neighbor by this decision. The fence de minimis encroachment should not allowed, it will increase land encroachment cases, especially for people want get more land in crowd city. **None should encourage getting free land from neighbor.**

The fence de minimis encroachment plus adverse possession becomes legal land robbery tool. You cannot deny the nature function of a fence. The only way avoid adverse possession is no fence encroachment allowed.

If court allows use fence de minimis encroachment method to becomes practical land owner. People may satisfy become practical owner. The adverse

possession is not necessary. The United States Supreme Court need look into this legal issue.

The de minimis or adverse possession may be for historical object which the ownership practically executed for many years. New construction utilize fence de minimis encroachment method to get neighbor's land should never allowed.

4. The term "de minimis" needs quantitative measure. From the decision it means the things are so small can be ignored so court does not take action.

The big or small is relative concept when talking about land/survey it is the half minimum unit in the survey which is 0.005 feet. You can find in all survey the land is 25.00 feet in width. Any thing bigger than 0.005 feet changes the number in survey. Any thing less than 0.005 feet then it is true de minimis.

Two inch is not small for my 2 inch fence, 2.6 feet walkway and 25 feet land width. I ask lower court about the quantitative measure of de minimis. Request denied. Clearly court cannot give quantitative measure. The measure will show the de minimis claim is false. More in appendix -22- item 10.

Without quantitative measurement you can say any thing is de minimis. The United Supreme Court need look into this ensue for insure judgment accurate and unified. The de minimis should have quantitative measure.

5. The lower court decision base is improper. None of cases is fence encroachment. None of case the defendant declares land boundary/ownership and can trigger adverse possession. Most of them are maintenance for old object.

Wing Ming Props. [U.S.A.] v Mott Operating Corp., 79 NY2d 1021: The air-right is not real property, no encroachment and the land ownership is not affected. It is **old air conditioner replacement.**

Hoffmann Invs. Corp. v Yuval, 33 AD3d 511: It is rebuilt **retaining wall.** It is **maintenance of existing object.**

Generalow v Steinberger, 131 AD2d 634: It is driver way and **retaining wall.** No info on new build or repair.

Robert v Kohs, 35 AD3d 178): **Restore exterior** and has nothing to do with land.

The key difference is the nature function of new fence is declares the land boundary and ownership. Mr. Jamil is demanding the land. He is **intentionally** takes down my fence and build his **new** fence for **declare land ownership** (see above reason 2).

The retaining wall has complete different nature function. It is beneficial to both sides. It protects high ground side foundation (my side). As long as the property line is some where inside of the retaining wall and Mr. Jamil's fence not cross the property line. I can restore my fence on top of the curb.

If the retaining wall may serve as land boundary, then encroachment will be 5.5 inches. But if my fence restored on top of it, the retaining wall will divided by fence. So **my fence has to be restored.**

The purpose of ruling examples is try support the correctness of the decision. But incorrectly use ruling example only show the decision is incorrect. Private lawyer try fool the court by using incorrect ruling example to enhance his argument but the court need aware of it.

The previous ruling only means some one give up on that court level and does not mean it is Constitutional. NO previous ruling, state or local law can overturn the Constitution. **The Constitution right should protect in all level of the court.**

6. People go to the court expect for get truth and justice to be served. The fence encroach to neighbor's land case is very popular. **The key issue is the Supreme Court support invader or support property owner?**

Mr. Jamil is intentionally put his new fence cross the property line. The lower court decided let invader continue to occupy my land for free and impose the cost to the case is **extremely unfair**.

Limited English should not be a burden for get fair judgment. The Knowledge of statutory provisions is not required for people get fair judgment. The truth and justice should serve without requirement of expertise.

7. Every one should bounds to signed agreement. The original agreement paper which I present at court room is still valid. There is no reason the fence posts cannot move. If it is true de minimis why cannot execute the agreement?

The fence posts not cross the property line is basic responsibility it should enforced even no agreement!

8. Initially I think may be court do not understand or misunderstand my English or the way I presenting things. But I am sure my written English is understandable.

It appears to me the lower court refuse accept very basic common sense. I think the amendment nine covers people's commonly believe.

Mr. Jamil spend much high expense then simply move his posts and continue fighting is for that 2 inch land ownership. I spend more than $4,500 move case up to here is for my Constitution right, usage right and the ownership.

It is physically impossible restore my fence without remove Mr. Jamil's fence posts out of my land. Insist no evidence of damage is practically wrong.

Our civilization and culture are built on top of basic science and common knowledge. The lower court decision makes me recall a parable about a wolf wants eat sheep. The lower court decision directly impact to people how to view of the Supreme Court system.

Base on Constitution I have right to ask public trial. In internet age, we can post all original documents to web let people vote.

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Conclusion

Nothing is more valuable than the Constitution. The vinyl fence need move out. Even the gold, diamond fence need move out. The Constitution is the foundation of our country.

Private property can not protect by Constitution and court is against America people believe.

The lower court decision shakes the foundation of the United States.

I ask The United States Supreme Court step in for insure America people get Constitution protection and do not let America people becomes victims of the Court system mistake.

The petition for a writ of certiorari should be granted

Respectfully submitted,

S/ Zhuang Li Cai
9934 67rd, apt 1A
Forest Hills, NY 11375
718-897-5751

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Format note:

1. A reference mapping created for each document original reference at end of each document. "->" means map to.
2. Partial survey enlargements created for easy reading.
3. Photos are not printed in color but can submit in color if required.
4. Inserted separation line for easy identify where is the copy of document inserted.
5. Due to I speak broken English and accent, transcript full fill errors. It does effectively covers the key issues I want present at that time. Do not confuse. Those errors are irrelevant; the later documents have more accurate description.
6. Some files are through OCR process. Even I do my best to verify them, there is possible few error exist. In case dispute the original copy can be reference.

Denial of reargument

State of New York Court of Appeals
At a session of the Court, held at Court of Appeals Hall in the City of Albany
on the sixth day of April, 2010
Present, HON. JONATHAN LIPPMAN, Chief Judge, presiding.

Mo. No. 2010—240 In the Matter of
Zhuang Li Cai, Appellant,

v.

M.D. Jamil Uddin, Respondent.

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

S/ Richard A. Reed
Deputy Clerk of the Court

Motion for re-argument in court of appeal

STATE OF NEW YORK

County Clerk Index No.:27891/2007

Zhuang Li Cai

v.

M.D. Jamil Uddin

Base on support officer suggestion the arguments will around possible over looked and misapprehended issues.

1. The root of the fact is **Mr. Jamil intentionally take down my fence for occupy 2+ inch of my land.** I ask court for protect my land. It is my constitution right. All other issues are subsequences from this root. The arguments on all other issues do not change any thing for the root fact and may not need over looked.

2. Mr. Jamil's opposition argument page 2 item 10[1] "the Supreme Court merely decided that there was no encroachment or ....." is a lie.

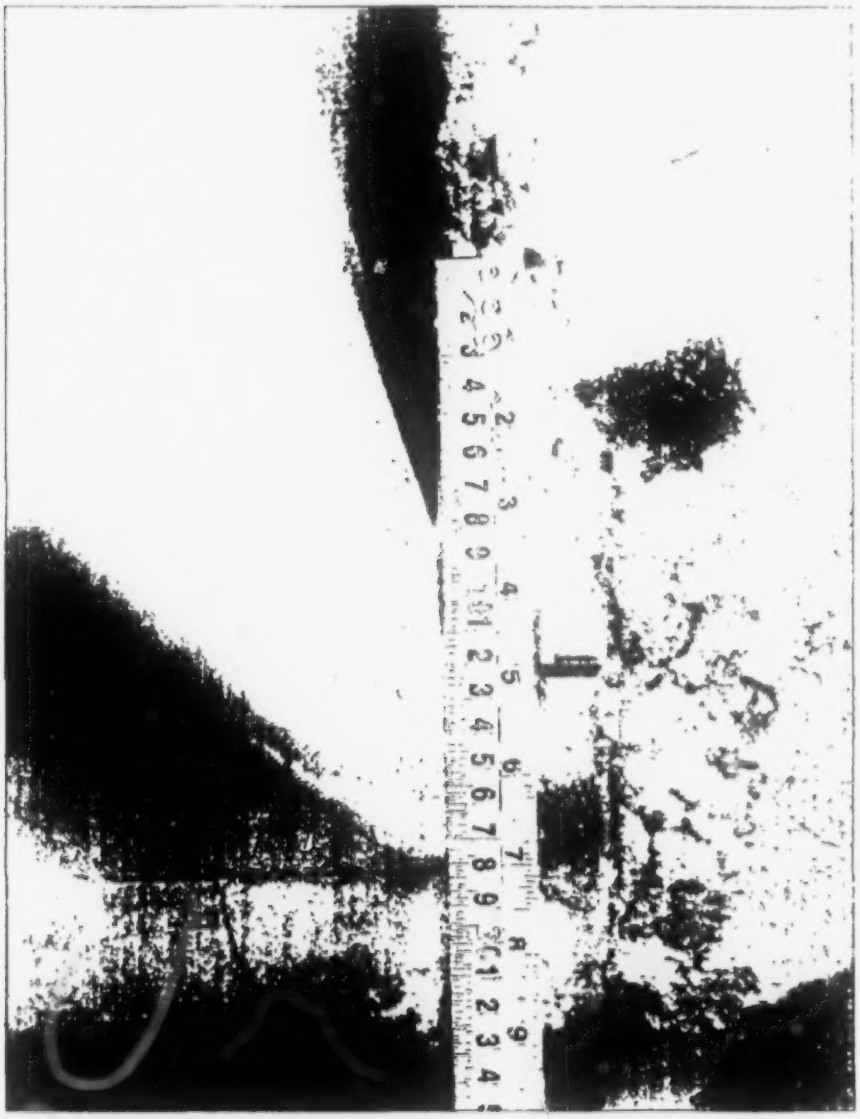
The Queens Supreme Court finds "**the posts to the fence extend beyond the property line.**"

The Appellate Division confirmed "**the alleged encroachment onto appellant's property consisted of one or more fencepost intruding onto the property by approximately two inches.**"

The word "**more**" covers many posts reached the 2 inch. In fact all **posts extend beyond the property line**. More accurate speaking fence posts cross the property line from 1 3/4 inch to 2 3/8 inch. The reason I say 2+ not 2 3/8 is for easy identified by Appellate Division. For same reason I say the fence post not the fence penal. The photos are the evidences.

Mr. Golden accepted encroachment fact and made no argument on 2 inch measure. **There is no point to argue "no encroachment" and no point to argue encroachment is less than 2 inch.**

I reinsert RECORD page 29 Exhibit N here in black (Print out).



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3. **The "de minimus" does not give Mr. Jamil the right to occupy my 2 inch land.**

The de minimus means **so small which can be ignored.** Look at the "Wing Ming Props. [U.S.A.] v Mott Operating Corp., 79NY2d 1021" case. The new model of air condition does not counted in air right calculation.

In land survey the "de minimus" is a half unit of the smallest measure unit such as 25.00' (' is foot) in 5 out of 6 surveys in RECORD (The right most 0) which is 0.005 foot = **0.06 inch.** Any thing smaller are ignored. **The amount of "de minimus" should not have any contribution to the survey otherwise it cannot ignore.**

If you still do not understand what that means, you can think 24.99' is obvious different from 25.00'. The survey never can be marked as 25.01' or 24.99' the width is defined by New York City. The right most digit is remarkable number cannot ignored. **Any thing bigger than 0.06 inch changes survey and cannot ignore.**

Do not confuse with the MAX measure error ¼ inch = 0.25 inch which I explained at my BRIEF. The MAX measure error may happened when measure whole street block. Start at the first house then next when reach the other end of street may be the error cumulated. In this case the surveyor will adjust it.

For example the whole street block has 5 houses. Each house adjusted 0.05 inch which is less then 0.06inch the last house error will below 0.06 inch. This is just theory in real world look the 5 of 6 surveys the property line is 2.60 feet away from my house. That number measured cross 50 years and made by 4 different surveyor companies.

The reason I ask court what is the guide line of the "de minimus" is I know the answer will over turn court decision.

The 0.06 inch de minimus variation is hard to identify and no way to do Adverse Possession and no one wants spend money on it.

2 inch is 33 times big than 0.06 inch and 8 times big than 0.25 inch

There is no point to argue 2+ inch belong to "de minimus" or not. The "de minimus" does not give Mr. Jamil the right to use my 2 inch land.

4. In case you still not convinced, I ask you to be my contractor to build my fence along the property line which is 2.60 feet or 2 feet 7 ¼ inch away from my house. Not like the surveyor use optical equipment you use tap ruler. Can you miss the position by more than the smallest unit 1/16 inch = 0.0625 inch? You eye cannot identify it is 1 unit missed?

Along 100 feet there may be 25 iron posts, if you just missed few posts by 1/16 inch I can accept your work. That is the de minimus variation mean. Please notice your miss only inside of my land, **you will not miss encroach to neighbor side.** You know other side is not my property.

Now I ask you build my iron fence along 2 feet 7 ¼ inch property line but Mr. Jmail's fence posts encroached into my land by 2 inch. Can you still do the work? Look at reinserted RECORD page 29 Exhibit N above. What you need is take down all Mr.Jamil's fence posts which block your way. **That is the evidence of Mr. Jamil's fence post altered or impeded the use of Mr. Cai's property.** Judge that is why I bring Mr. Jamil to court for.

5. I think the reason of deny my motion move to court appeal may be I use strong tone against court decision. That should not be misapprehended. It is my true feeling. One court officer told me that he is house owner he understands my frustration and anger. Judge if you owner a small house in very crowded Queens you will know how valuable that 2 inch land. Every one tries to build as big as possible house with in limited width. Aggressive owner try hard to encroach

to neighbor's land that is exactly what happed in my case. My peaceful life is destroyed by Mr. Jamil's invasion.

a. **Work:** I go to work late because I have to wait on site for police arrive to stop Mr. Jamil take down my fence. I go home early I need take picture before too dark. I need leave work at middle of day to meet surveyor. I spend many hours in the law library which is only open at week days. I have to use my vacation days.

b. **Family:** I cannot have more time to bring my kids to park. I cannot spend more time help my kids learning. My wife blame me why not spend $2,000 to hire a lawyer. I explain to her **it is a principle we do not have to spend money because other people's fault.** The lawyer fee is not cover by court judgment. But each time my motion denied she always blames not hire a lawyer.

c. **Time:** I have no law education background. I have to lean every thing from ground. My English is poor. Each document I need write many times for other people can understand. Some times I need spend many hours to get spell correct. Because of my accent, the Microsoft Word does not come out right words. I may misuse words which the dictionary translation is misleading or due to culture difference.

d. **Finance:** I have to allocate necessary fund to push case move forward. In economic down turn this brings more burdens to my live. I have no choice that 2 inch is very important for **keep the integrity of the house**.

More important is mentally suffering. All above are consequences of Mr. Jamil's encroachment. At beginning it is not so sharp. Alone time goes by it become sharp issue in my family. Judge do you think I need suffer all this painful process? **My peaceful life is destroyed by Mr. Jamil's encroachment. That is why my tone is very strong. This is a fact.**

6. Mr. Jamil claims I raise new issues in my motion. **Mr. Jamil lies against existing court documents.** Here from a. to e. matched Mr. Jamil's opposition a. to e[2].

a. **Adverse Possession**: In RECORD page 19 initial motion item 9.[3] I descript the law of Adverse Possession but I do not know the name. In RECORD page 79 TRANSCRIPT line 15 to page 80 line 4.[4] The Judge speaks out the word "Adverse Possession". Along the court process I am improving the understanding and description.

b. **The removal of a prior fence was improper**: On Appellate my BRIEF page 2, item 4[5], I clearly state "When Mr. Jamil wants take down the front part I called police for stop him." I called 911 which is recorded can be verify by court. No need to argue.

c. **Asking finance damage is not new issue**: In my motion to court of appeal, I raise it to $7,500 for cover court of appeal cost. It is on front page of the motion and page 11 item 9[6].

The $49,000 is suggested amount, **IF** court of appeal considers impose punitive damage. This is in motion to court of appeal page 22 item 2 second last paragraph.[7]

Finance damage requirement never be a burden for truth and justice. It should not be a burden of fence posts remove. A note posted in Queens Supreme court pro self support room said the judge will reduce the amount you are seeking for.

d. "two inch (2") encroachment . . . **created further safety hazard**": this is in Appellate division my BRIEF page 1 item 1, last 3 lines.[8] I clear stat that "As I know, the minim safety requirement for the walk way is 32 inch=2.66 feet"

With the help of building department officer I find the related code in their web site. I know my house is designed to maximized use the land. So that any reduce the width will create safety problem.

Current code for exit pathway is 36 inch. My pathway is 31.2 inch is already not meet current safety code. If the

pathway encroached by 2 inch then the width becomes 29.2 inches or smaller. Any attempt claim 29.2 inch is not more damager than 31.2 inch just undermines people's IQ.

e. **Property title becomes "unmarketable"**: The property value issue is raised by Queens Supreme court's decision. In my BRIEF page 14 item 16.[9] I clearly state the encroachment "greatly reduced the property value". It is common sense; the encroached property never has same value as not encroached. In Mr. Golden's REPLY BRIEF page 3 item "Value of property"[10] also argue that I offer no evidence to support "greatly reduce property value".

Now here it is. It proves encroachment damage the property title and becomes unmarketable. A law library assistant finds that if the property not clears of encroachment the property title is unmarketable. She told me that the front part is the conclusion; the index is the law and previous ruling example. I copy whole section in to my motion. I added my comment at end to prove what I said in my BRIEF is true.

Argue on my property value issue does not give Mr. Jamil the right to occupy my land.

7. **Think it logically**.

Why Mr.Jamil spend much more money than move his new fence? From photo you can see we start fight before fence is up (RECORD page 25 Exhibit F[11]). He has no deny on it is intentional encroachment. He spends money for 2 surveyors and his lawyer is just for de minimus?

Why Mr. Jamil provides to court with altered document, suspicious survey and lie to the court?

The motivation is using Adverse Possession to permanently change that 2 inch land ownership. Please check my BRIEF page 1[12] "the center of the fight"

If the de minimus variation is smaller than 0.06 inch then it is hard to prove it in the court, no way to change the survey and the Adverse Possession become useless. 2 inches is big enough, easy to prove in the court, can change the survey and proceeding to the Adverse Possession. Aggressive

people will ask court to adjust the miner difference in the survey to reflect the truth of occupancy.

The lower court does not give any quantitative number to define the de minimus measure. It could be any arbitrariness number then no truth and justice can be severed. Further more it opens the door for endless encroachment case. Everyone can encroach to other people's land and declare it is de minimus.

8. Focus on the fence posts remove arguments.

I write this section is for fresh review and avoid early arguments distract the key issues.

a. All Mr. Jamil's fence posts have to move out of my land. It is my constitution right to protect my property.

Following are subsequences.

b. All new construction has to respect the property line. There is NO exception.

c. I need rebuild my iron fence along the property line all Mr. Jamil's fence posts which block my fence path need complete removed from my land.

d. The de minimus will not give the Mr. Jamil the right to occupy my 2 inch land. 2 inch is not belongs to de minimus in land survey which is 0.005 foot = 0.06 inch. 2 inch is not de minimus in any comparison in this case (2 inch my fence, 31.2 inch exit walkway and 25.00 feet land)

e. My property value issue does not give Mr. Jamil the right to occupy my land. Clear of encroachment is requirement for a marketable property title. This is professional conclusion in court library document.

f. Currently the New York building code §[C26-601.1] 27-357 Exit requirements: the Residential exit corridor not less than 36 inches. Further reduce my 31.2 inch exit walkway bring more safety hazard.

g. Mr. Jamil still insists "**there was no encroachment**". His fence posts are on his land. He still tries claim that my 2 inch land is his property. It is clear the Adverse Possession is his motivation.

9. Words to court of appeal:

I already provide court of appeal the decisions, RECORD, my BRIEF, Mr. Golden's REPLY BRIEF. It is not too hard to find Mr. Jamil lie against existing documents. If I do not have chance to replay Mr. Jamil's opposition then this court need verify who say the truth. This court need provide each judge related documents.

I do believe when people select to be a judge as a career, people want serve for truth and justice. But without proper resource judge cannot find the truth.

Due to different major or education back ground or culture, It may little hard to understand what I said but I did in mathematics and logical way so that with concept of number and little thinking. My arguments should understandable.

This is my entire guess why motion denied. It may be just I raise too many issues. Without formal help it is just the best guess.

This is the last page of motion.

Date: February 8, 2010 Signature: S/ Zhuang Li Cai

Reference mapping:

[1] opposition argument page 2 item 10 -> -38-, item 10,line 6

[2] opposition to move to court appeal a. to e. -> -39-, item 13

[3] RECORD page 19 initial motion item 9 -> -47-, item 9

[4] In RECORD page 79 TRANSCRIPT line 14 to page 80 line 4. -> -117-, line 27

[5] BRIEF page 2, item 4, -> -80-, item4 first paragraph.

[6] It is on front page of the motion and page 11 item 9 -> -22-, item 9

[7] page 22 item 2 second last paragraph.-> -32-, item 2, 4th paragraph.

[8] Appellate division my BRIEF page 1 item 1, last 3 lines,->-79-,item 1,last 5th line.

[9] my BRIEF page 14 item 16 -> -88-, item 16, 3rd paragraph

[10] REPLY BRIEF page 3 item, -> -95-, "Value of property"

[11] RECORD page 25 Exhibit F -> -57- Exhibit F

[12] my BRIEF page 1 -> -79-, item 1, "The center of the fight"

Opposition of reargument

STATE OF NEW YORK COURT OF APPEALS
Index No.: 27891/97

ZHUANG LI Cal Petitioner
-against-
MD JAMIL UDDIN Respondent

STATE OF NEW YORK)
) SS.:
COUNTY OF QUEENS)

Richard N. Golden, an attorney at law licensed to practice in the Courts of New York State, under penalty of perjury affirms:

1. I am the attorney for Mohammed Jamil Uddin and familiar with the facts and circumstances herein.
2. This Affirmation is respectfully submitted in Opposition to the Motion to Reargue the Application for Leave to Appeal.
3. The Application of Mr. Cai fails to set forth any matters of fact or law allegedly overlooked by this Court in its decision to deny the Application to appeal the decision of the Appellate Division.
4. Mr. Cai appears to be offering his personal opinion and fails to provide either statutory or case law to refute the opinions of the Honorable Charles J. Markey and the unanimous opinion of the Appellate Division.

WHEREFORE, it is respectfully requested that the Motion be denied and for such other and further relief as this Court deems just and proper.

Dated:Forest Hills, New York. February 27, 2010
S/ RICHARD N. GOLDEN Attorney for Respondent

Denial of move to court of appeal

State of New York Court of Appeals
At a session of the Court,
held at Court of Appeals Hall in the City of Albany
on the twelfth day of January, 2010
Present, HON. JONATHAN LIPPMAN, Chief Judge, presiding.
Mo. No. 2009-1210, In the Matter of

Zhuang Li Cai, Appellant,

v.

M.D. Jamil Uddin, Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

S/ Stuart M. Cohen
Clerk of the Court

Motion for leave to the court of appeal
and for additional case expense $2,500.00.

STATE OF NEW YORK
County Clerk Index No.:27891/2007

Zhuang Li Cai
- against -
MD. Jamil Uddin

Questions presented

Note: "The court" in following sections will refer to Queens Supreme Court, and Second Judicial Department.

1. Mr. Jamil takes down my fence build his vinyl fence and intentionally cross the property line by 2+ inches. Queens Supreme Court, Second Judicial Dept and Mr. Jamil lawyer Mr. Golden acknowledged that I am the owner of that 2 inches land. Mr. Golden has no deny of Mr. Jamil is **intentionally cross the property line**.

The Queens Supreme Court decision let Mr. Jamil continue to occupy my 2+ inches land and the Second Judicial Dept imposes cost to the case.

Very clearly I should have the right to use my 2+ inches land, Mr. Jamil's fence need move out of my land. America law should protect private property.

The simple question is **why Mr. Jamil has superior right over the land owner me to put "one or more" his fence posts on my land? Why I cannot put my fence on my land?**

Playing words does not change the fact. The truth is all fence posts cross the property line. I have to cut down all of them for build my fence. Mr. Golden claims only 3 fence posts cross by 2 inches ("Replay brief" respondent brief page 1[1]). Do you believe all other fence posts jump back by 2 inches? **Arguing**

how much does not change the fact. Mr. Jamil occupies my land.

2. The decisions from lower court and Appellate Division are unconstitutional.

Both court identified Mr. Jamil Uddin's Vinyl fence encroach my land by 2 inches.

Both courts emphasize the encroachment is the de minims.

Both courts insist there is no evidence of damage.

The Constitution right for protect private property does not limited by the size/value of the property and does not request owner to provide the evidence of damage for getting the property back.

2+ inches is not de minims for my 2 inches fence and 29.2 inches walkway.

My land **exclusively occupied** by Mr. Jamil and I cannot build my own fence is the evidence of damage.

I am the owner of that 2 inches land. **I have the Constitution right to protect my land and use my land.** The Mr. Jamil's fence posts are temporally structure and easy to move. **He has NO right to use my land.**

Previous ruling example cannot over write the Constitution.

3. **"All men are created equal".**

If the court let Mr. Jamil use force take down my fence and encroach to my land 2+ inches, I should has same right to take down Mr. Jamil's fence and encroach to his side by 2+ inches.

The court let Mr. Jamil has superior right over the land owner me then the decision is evidence of discrimination in the court system.

Deny my request for clarification is discrimination to the people who does not have lawyer and unable to fully understand what court decision mean and consequences.

New York state law not allows judgment reward lawyer fee then it should create environment fairly to Pro self. Everyone should treat fairly in the court regardless their occupation, education. I am not a lawyer. I think the decisions are illogical. I have the right to get clarification. The court should not take advantage of my major is not in law. I need to know what happened for this out of law decision. May be my English is too poor? May be the way I present the facts not meet court requirement?

I was forced to have very short time (4 day compare to 15 day) to Answer Mr. Richard's "REPLY BRIEF" due to I never receive his "REPLY BRIEF" on mail. I have to pickup his "REPLY BRIEF" from Mr. Richard Office after 5 PM on Dec 5 and mail out on Dec 9 at 8 PM in New York center Post office for meet court date.

In general, the court intend to discriminate people does not have lawyer. Put them in unfair condition such as how to mail, how to pay and even the seat in the court room.

The court did not say Mr. Jamil Udin is supper class man but **let he has superior right to continue occupy my land.** The court did not say I am lower class man but **take away my 2 inches land usage right.**

Clearly not everyone can use force to occupy other people's land.

Clearly **NO** one should have right to occupy other **people's land.**

Clearly this is **discriminate ruling.**

4. My peaceful life destroyed by Mr. Jamil's new **construction** encroachment. The court supposes is the place for protect people from unlawful invasion. This is simple case. This is new construction.

The court function is keep fair, truth and justice. **Now what side the court stands for?** The court decision directly supports **exclusively** encroachment

in new construction. **Where are fair, truth and justice?**

I feel I catch a robber and the police not only let the robber keep the money and impose a fine to me. No question that police will be in jail. .

In my view the America court system totally lost their reputation.

The court support invader or protect private property?

5. The court knows Mr. Jamil intentionally cross the property line is for utilizing the New York state law "**Adverse possession after expiration of statutory period.**" The fence posts are the inclusive component of the fence and can be substantial enclosure in the adverse possession. **Any attempt to declare fence posts not belong to fence are just like declare you leg not belong to you.**

Look fence posts encroachment brings in the facts.

A. **Actual** –The court confirmed Mr. Jamil's fence posts encroaches my land by 2 inches.

B. **Open & Notorious** – Mr. Jamil's fence not only cross the property line it also has 2 red mark "in line" on two of the fence posts for claim that 2 inches is Mr. Jamil's property. Everyone can see the fence.

C. **Exclusive** – Fence posts are exclusively occupied my 2 inches land so I cannot build my fence.

D. **Hostile** – Hostility exists where a person possesses the land of another intending to hold to a particular recognizable boundary regardless of the true boundary line. That is, exactly what Mr. Jamil wants to claim in lower court position of motion (Record page 40 item 14[2])

E. Under Cover of Claim or Right - Mr. Jamil claims his fence is inside of his property and **produces suspicious survey to support his claim of right.**

All Mr. Jamil missed is the 10 years statutory period. The court decision directly supported Mr. Jamil take "Adverse possession" to get my land.

Let Mr. Jamil's fence posts continue to occupy my land is absolute not acceptable. I am the owner and effectively proved to the court that 2 inches is my land. **Now is New York court responsibility** to ensure my land will not be adverse possessed! All Mr. Jamil's fence posts need move out of my land.

The court knows the vinyl fence is screw mounted panel on the post. The court knows both side spend much more money than shift fence posts. The court know both side is fight for ownership of that 2 inches (now and future). The decisions only confirm I am the owner of that 2 inches land now. But it take away my usage right by let Mr. Jamil's fence continue to occupy my 2 inches land. This is violation of the Constitution and creates future ownership issue. **The Second Judicial Dept just denies clarify on this.**

I am the owner of that 2 inches land. I have the right to use that 2 inches land. Mr. Jamil does not have the right to use my land. Move all Mr. Jamil's fence posts out of my land.

6. **Who has the right?**

I am the owner of that 2 inches land. Base on NY CLS RPAPL §871, I can remove everything on my land and build my fence. I do not need ask court intervention. The reasons I ask court take action are

a. **I want peaceful accurate remove.** Mr. Jamil can unscrew his vinyl fence and reassembly after move the fence posts. Even the court supports Mr. Jamil encroach to my land I have NO intention to encroach into his side. I do believe court decision violate the law and create endless fight.

b. All my money spent on this issue need rewarded. **There is NO reason for me to spend any money on Mr. Jamil's invasion.** Due to the nature of Mr. Jamil intension I have to precisely rebuild my fence.

Mr. Jamil has No right to take down my fence. Look at Record page 26 Exhibit H[3] and Exhibit I[4] , you can find **my old chain fence is inside of my land.** Mr. Jamil takes it down even after I called police. Look at Record page 46[5] and page 106 Exhibit D[6], the back part of my old chain fence which was partially fell due to Mr. Jamil's new construction digging the foundation. I agree to remove my back part of chain fence with condition **not cross the property line.** I give Mr. Jamil 30 day's notices to move his fence back before I start bring him to the court.

7. **2 inches encroachment is substantial and created further safety hazard.**

"*Encroachments on the street by ornamental projections on an apartment house from 1½ to 2½ inches in the City of New York were held to make an unmarketable title, although under the building code of the city such ornamental projections were not more than 2½% of the width of the street.*[36]

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[36] *Lencrif Realty Corp. v. Csppelan. 220 AD. 828, 222 N.Y.S. 842. ajf'd. 247 N.Y. 566. 161 N.E. 184. (1921).*

"

Clearly 2 inches are not de minims. If my walk way lost 2+inches then it is less than 29 inches. It is 6.4% short.

My walk way is the safety exit from second floor and first floor to back yard to street. **Currently** the New York building code §[C26-601.1] 27-357 Exit requirements the Residential exit corridor not less

than 36 inches. The court decision created further safety hazard.

I am the owner of that 2 inches land. I have the right to use that 2 inches land. Mr. Jamil does not have the right to use my land.

8. **Encroachments make property title nmarketable.**

"Marketable title is a good title, one that is free and clear from incumbrances and encroachments or from material defects in the title; one which, with reasonable certainty, will not be called into question, and which can be readily sold to a reasonably prudent purchaser or mortgaged to a person of reasonable prudence as security for the loan of money. [2]

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[2] *Crocker Point Ass'n v. Gouraud, 224 N.Y. 343, 120 N.E. 737 (1918); Heller v. Cohen, 154 N.Y. 299,48 N.E. 527 (1897); Pyramid Motor Freight Corp. v. Thorman Baum & Co., 114 N.Y.S.2d 614 (Sup. Ct. N.Y. County 1948). See also Vanderwor! v. Higginhotham, 222 A,D.2d 831, 634 N.Y.S.2d 800 (3d Dep't 1995); Caselli v. Messina, 148 Misc. 2d 671, 567 N.Y.S.2d 972 (2d Dep't 1990). aff'd, 193 A.D.2c1 775, 598 N.Y.S.2C1 265 (2d Dep't 1993). "*

The court confirmed there is encroachment exists. So the title is unmarketable. It is common sense. Encroached land will not have fair market value.

Occupy other people's land then ask for prove of damage in property value is like a robber rob $1 and ask plaintiff for prove "monetary damages" in the court.

I am the owner of that 2 inches land. I have the right to use that 2 inches land. Mr. Jamil does not have the right to use my land.

9. Mr. Golden never denies or objects Mr. Jamil is intentionally cross the property line. **All my spending need recovered from court judgment.**

I show the survey which I got from building department to Mr. Jamil told him the property line is 2.6 feet away from my house. He rejected.

I hire one surveyor put property line stamp on the ground ($500) and hire another surveyor made new survey ($550). Mr. Jamil destroyed the property line stamp. Then I pay $450 for put property line stamp on the ground again. Mr. Jamil destroys it second times.

I am have to bring Mr. Jamil to the court for protect my land. I estimate $1,000 in court expense and $2,500 for rebuild whole fence.

Now I ask additional $2,500.00 for the expense beyond lower court. The **total is $7,500.00** in finance damage.

Please notice that I should not suffer this legal burden. Mr. Jamil has to respect to the property line during his new construction.

I have consulted with two lawyers both agree they can recover my land and all expense for rebuild fence and court process fee. But both told me that New York state law does not allow judgment reward lawyer fee. My point is I should not spend a penny on this. If New York State thinks the court system can handle people who do not have lawyer fairly then I should be able do it.

10. **The court decision is totally base less and full fill logical errors.**

The court knows the "**Wing Ming Props. [U.S.A.] v Mott Operating Corp., 79NY2d 1021**" case is for business future development air right. The court knows the new air condition model has NO effect in air right calculation. But the court uses it for residential land boundary encroachment case. This proves 2 things. 1. **There is NO land boundary case support exclusively de minimis encroachment ruling.**

2. **The court is not base on land boundary case.** If air right case can use in land boundary case then an illegal immigrant snake into USA is de minimis.

The court knows small or large is relative concept. Compare 25 feet width of my land with 2 inch is 1/150. From north board of USA to south board is about 1,800 miles. Base on court decision both Canada and Mexico can take away 12 mile land from USA. 1/150 is de minimis encroachment!

Why my 2 inches land occupied by Mr. Jamil is not evidence of damage? I am unable to rebuild my fence in my 2 inches land is the damage.

If this ruling stands then I can use this ruling take down Mr. Jamil's fence and build my fence cross property boundary by 2 inches. **Everyone can take down neighbor's fence and cross the property line by 2 inches. This is not joke. This is the decision ruled. Why Mr. Jamil has superior right over the land owner me to put "one or more" his fence posts on my land? Why I cannot put my fence on my land?**

I attach my motion for "clarification of the decision" as part of my questions presented. There are 8 pages with separated page number from 1 to 8 after this page.

!!Format: inserted copy of motion for clarification.!!

Supreme Court of the State of New York
Appellate Division: Second Judicial Department
Appellate Division Docket No. 2008-4456

Zhuang LI Cai Petitioner,
--against --
M.D. Jamil Uddin, Respondent

Dear Judge:

I am not lawyer. I have difficulty time to understand the court decision. I need the clarification of the decision.

1. My ownership of this 2 Inch land:

The owner ship of the 2 Inch land (which occupied by Mr. Jamil fence post) may changed (now and future) by court decision?

In case Mr. Jamil declares that 2 Inch is his property base on 10-15 years occupancy. Do I have risk to lose that 2 Inch property?

Base on VI New York Jur 2nd, "Adjoining Landowner" section 119 page 757, If Mr. Jamil's fence not move out of my property he can declare the now boundary.

See attachment pages (on page 3)[7].

I need clarification that I will not lose that 2 Inch land in any time due to this decision.

2. Property owner usage right:

I can use that 2 Inch land or not?

If I cannot use that 2 Inch land, my property is damaged. That is evidence of damage.

If it is real "no any damage" I should be able build my new fence (2 Inch post) on that 2 Inch land, but the Mr. Jamil's fence posts block the path. Please advises how I can build my fence on that 2 Inch land?

3. Constitution right:

As I understand, protects personal property is the constitutional right. The constitution does not require the size and value as condition for protection and does not require the owner provide evidence of damage for get property back.

Is this court decision overwrites my constitution right?

4. What is the acceptable evidence of damage?

I did not explicitly list damage in lower court due to I know I have constitution right to protect my land. I do list them in my brief. I do include evidence of damages which several court officers think are

good example of damages. The court decision still says I did not provide the evidence of damage.

Why that 2 Inch is not evidence of damage?

Why my land occupied by other people is not damage?

5. My rights VS remove post cost:

That 2 Inch land is my property. All property owners have right to use their own property. Tax payer right allows me fully use that 2 Inch.

Mr. Jamil is not that 2 Inch land owner. He has no right to use my land. He does not pay real state Tax on that 2 Inch land.

Why he can occupy that 2 Inch land and block my new fence path?

Why all my rights cannot justify the cost (<$1500) of remove Mr. Jamil's fence post from my land?

6. What is the guide line of de minims?

Big or small is a relative concept. 2 Inch need compare with some size then say it is de minims. 2 Inches are large enough for build my new fence.

7. The Wing Ming Props LTD V Mott Operation Corp case is totally different. Attach a copy of full document. (On page 4 - 6)[8]

The Wing Ming Props LTD is fight for air right for future development.

The de minims is old roof air condition equipment replace by new one. NO encroachment occurred.

The Wing Ming Props LTD's air right is not effected due to the calculation does not related with roof air condition equipment. They have same right as before. There is NO real private property in this case.

My case is totally different.

I fight for my 2 Inch land. It is private property.

The de minims are 2 Inch of my land.

My right is damaged. I cannot build my new fence on that 2 Inch land. The Mr. Jamil's fence posts block the path.

Base on what the ruling can apply to my case?

Following are attachment pages.

!! Format : copy from court library book !!

ADJOINING LANDOWNERS

§119 —Fences

Research References

West's Key Number Digest, Boundaries ~3(4)

A fence erected on a surveyed line shortly after the land has been surveyed may serve as a monument to control courses and distances or a subsequent survey after the stakes of the original survey have disappeared.[1]

Where the premises have been bounded by a fence for many years, the law presumes that the fence is the true boundary, and will not disturb such a line, even where it does not correspond with the line of the premises as shown on the map according to which they were conveyed.[2]

In a boundary dispute, the fact that by taking a fence as the boundary the quantity of land would be the same as that specified in the Defendant's chain of title is significant in determining the true line.[3]

• Definition: A "railroad fence" called as a base line is presumably the same as a visible stone wall at or near the line of the railroad right of way, where the owner was under covenant to fence the railroad and,

in a deed eight years later, called for the "railroad fence" as a boundary, which call was repeated in other deeds, and where no fence but the stone wall ever existed at the place, and at the time of trial it had existed for many years, even though it was conceded that the wall was distant some feet from the true line of the right of way.[4]

[1] *Holden v Crolly, 153 AD 254, 138 N.Y.S 23(2d Dep't 1912).*

Annotation References: Fence as factor in fixing location of boundary line-modern cases, 7 A.L.R. 4th 53

[2] *McMahon v Morse, 135 Misc 233,287 N.Y.S. '861 (Sup 1929).*

As to the period of time adverse possession must be maintained in. order to ripen into title, see Adverse Possession and Prescription §§55,57

[3] *Whitney v Dudley, 40 NY S.2d 888(Sup 1943), judgment aff'd without opinion, 266 A.D. 1056, 45 NY.S 2d 725 (4th Dep't 1943)*

[4] *Holden v. Crolly, 153 A.D. 254, 138 N.Y.S. 23 (2d Dep't 1912)*

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Wing Ming Properties (U.S.A.) LTD)., Appellant, v Mott Operating Corp. et al., Respondents.
Argued March 26, 1992; decided May 7, 1992

SUMMARY

Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered April 16, 1991, which affirmed an order of the Supreme Court (David B. Saxe, J.; opn 148 Misc 2d 680), entered in New York County, inter alia, denying a motion by plaintiff for partial summary judgment, and granting a motion by defendants for summary judgment dismissing plaintiff's complaint.

Wing Ming Props. (US.A.) v Mott Operating Corp., 172 AD2d 301, affirmed.

HEADNOTE

Trespass — Continuing Trespass — Air Rights — Transfer of Air Development Rights

In an action for trespass arising out of the construction of replacement equipment and parapets on a rooftop adjacent to plaintiff's building, defendants, the owner and lessees of the building next to plaintiff's, did not trespass on the development rights conveyed to plaintiff's predecessor in interest in an agreement which conveyed "all that volume of space and property" above defendants' building and which was intended to increase the Floor Area Ratio (FAR) of plaintiff's building in order to permit the construction of a building taller than would otherwise be permitted under the applicable zoning ordinance, since the new equipment and parapets erected by defendant lessee are excluded from the computation of FAR under the zoning resolution; consequently, the FAR of defendants' building and plaintiff's development rights are unaffected by the new equipment. Although defendants also conveyed a property right for plaintiff to exclusively possess the rooftop airspace above their building, no trespass on that right was sufficiently presented to withstand a summary judgment dismissal as to the relief plaintiff sought, since the variations between the equipment existing at the time of the conveyance and that subsequently erected by defendant to replace it are de minimis at best, and neither injunctive nor monetary relief is warranted since plaintiff has failed to show that those slight variations affected its property value in any measure.

APPEARANCES OF COUNSEL

David C. Sprafkin for appellant.

Peter F. Dwyer for Mott Operating Corp. and others, respondents.

Maureen R. Green for Bank Central Asia, respondent.

OPINION OF THE COURT

MEMORANDUM.

The order of the Appellate Division should be affirmed, with costs.

In 1973, defendants-respondents Mott, Kaplan, Chu and Tam conveyed "all that volume of space and property" above a building located at 5 Chatham Square in Manhattan to plaintiff-appellant's predecessor in interest. Defendants reserved the right to "maintain the projection" of an existing rooftop air-conditioning unit and room. Plaintiff's predecessor in interest planned to later transfer the unused development rights of the rooftop airspace, subject to defendants' reservation, to a contiguous building which it owned. The objective was to increase the Floor Area Ratio (FAR) of the contiguous building, thus allowing a greater height.

In 1985, defendant Kaplan subleased 5 Chatham Square to respondent Bank of Central Asia (BCA) with a specification allowing BCA to "use the roof facilities in connection with any heating, ventilating or air conditioning equipment" and to "alter the entire facade of the Building" up to the second floor level BCA subsequently removed the existing rooftop air-conditioning equipment and room, erected new air-conditioning equipment, and constructed a facade with parapet walls extending over the rooftop.

Plaintiff-appellant, as successor in interest, commenced this action for trespass, alleging that the new equipment and parapets encroached on the rooftop airspace which was acquired under the 1973 conveyance. Supreme Court granted defendants' motion for summary judgment dismissing the complaint (148 Misc 2d 680) and the Appellate Division affirmed (172 AD2d 301). This Court granted leave to appeal.

Defendants concede that development rights were conveyed pursuant to the 1973 conveyance. Despite the concession, we agree with the defendants and the courts below, which ruled in. their favor, that defendants did not trespass on those development rights. The new rooftop air-conditioning equipment and parapets erected after 1985 by BCA, are

excluded from the computation of FAR under New York City Zoning Resolution § 12-10. The FAR of 5 Chatham Square and, consequently, plaintiff's development rights, are therefore unaffected by BCA's parapets and substituted equipment.

Despite the fact that defendants in 1973 also conveyed a property right for plaintiff to exclusively possess the 5 Chatham Square rooftop airspace, no trespass on that right is Sufficiently presented to withstand a summary judgment dismissal as to the relief plaintiff seeks in that regard. The variations between the air-conditioning unit and room existing at the time of the 1973 conveyance and the replacement unit and ducts subsequently erected by BCA, and the extent to which the newly constructed parapets rise above the elevation plane of the conveyed airspace, are de minimis at best. Neither injunctive nor monetary relief is warranted. Indeed, plaintiff has not alleged or demonstrated on the record before us that these slight variations negatively affected its property value in any measure.

*Chief Judge WACHTLER and Judges KAYE, TITONE, HANCOCK, JR., Bellacosa and Yesawich, JR., * concur; Judge Simons taking no part.*

Order affirmed, with costs, in a memorandum.

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S/ Zhuang Li Cai, Feb 9,2009

Dated: February 12, 2009 S/ zhuang Li Cai

!!Format : end of motion for clarification.!!

!!Format : copy of denial of clarification!!

Supreme Court of the State of New York

Appellate Division: Second Judicial Department M84101 E/sl

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
FRED T. SANTUCCI
THOMAS A. DICKERSON, JJ.

2008-04456 DECISION&ORDERONMOTION
(Index No. 27891/07)

In the Matter of Zhuang Li Cai, appellant,
v.
M.D. Jamil Uddin, respondent.

Motion by the appellant for clarification of a decision and order of this court dated January 20, 2009, which determined an appeal from an order of the Supreme Court, Queens County, dated March 18, 2008.

Upon the papers filed in support of the motion and no papers having been filed in opposition thereto, it is

ORDERED that the motion is denied.
PRUDENTI, P.J., RIVERA, SANTUCCI and DICKERSON, JJ., concur.

ENTER:
S/ James Edward Pelzer Clerk of the Court
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!!End of Questions presented !!

Why the court of appeals should grant the motion.

1. **New construction property line fight is not isolated case. All new construction should absolutely respect to the property line. Allowing new construction to use de minimis encroachment to occupy other people's land is not only violated the Constitution but also open the door for criminals.**

Look into how Mr. Jamil provides court the altered agreement document.

Look into 6 surveys percent in the court. 5 of surveys clearly indicate the property line is 2.6 feet away from my house. There only one claims it is 2.5 feet away from my house. The court and Mr. Golden accepted the 2.6 feet is the property line. My question is How Mr. Jamil get that survey? In my brief I proved it is intentional made. What happened behind this survey?

Allowing de minimis encroachment in new construction will open the door for aggressive people to encroach to other people's land.

2. A clear ruling is more important in New York State. There is "adverse possession" law in New York State. The owner is responsible to bring case to the court within statutory period. The New York State court system is responsible to support owner get property back.

There is multiple laws state that the fence is substantial enclosure and used to adjust the property line. The fence post is part of fence and is inclusive component.

A clear ruling example is needed. The "Wing Ming Props. [U.S.A.] v Mott Operating Corp., 79NY2d 1021" case is not a land boundary fight case. It is fight the future building air right! The court decision has no base.

A clear ruling is needed for preventing future more cases. In this sense, I suggest court of appeals impose $49,000.00 punitive damage reward for compensate my time, mental suffering and other damages.

The only way to preventing adverse possession is move all fence posts out of my 2 inches land.

3. The function of Court of Appeal is performing the execution of the Constitution and the law regardless the Judge preferences and helping people get fair judgment from court system.

The fact is clear and the case is simple. The decision is not variation on interpretation of the law, not misjudgment and not lack of professional moral issue. It is obvious violate the Constitution and law.

From my view it is criminal. I feel I catch a robber and the police not only let the robber keep the money and impose a fine. Base on every thing on the court records I can say it is discrimination.

This kind of decision should not allow in the first place. Let Judge preference over the Constitution and law is non professional behaves or misconduct for a Judge. It opens the door for corruption.

This kind of decision should not allow in the first place. It brings to plaintiff unnecessary legal burden. The aggressive invader will take chance for bet on plaintiff will give up before final truce justice severed.

As mature court system it should be able to correct this problem. The Court of Appeal is the place. I do believe there is no needs go any higher.

4. New York state law does not allow judgment reward lawyer fee then it is New York state court system responsible to provide proper resources so that Pro self can fairly handled.

Who needs to know the law? One of court officer told me several times the Judge does not know the law I have to point out which law is. I think if Judge

does not know the law then he is not qualified for his job. I give Judge the truth, Judge ruled base on fact and law. I am Pro self not expert on law and unable to find detail of all laws and cases fit this case.

Expecting Pro self performed as a lawyer is unrealistic. A formal legal assistant is necessary for Pro self.

In lower court, I think all I need is prove Mr. Jamil cross the property line. The court should protect my personal property.

In Second Judicial Dept, I point out 2+ inches land is not de minimis for my 2 inches fence and provide several evidences of damage which several court officers are suggested or agreed.

One of the court officers told me that he is the house owner. He knows a similar case handled in small claim court and get encroached fence move out quick. Why Queens Supreme Court cannot do same thing? The Constitution is different from each of the court? Or the law is different from each of the court?

If court of appeal can instruct me how to do it in Second Judicial Dept then I will follow.

For example may be I need file motion to take down Mr. Jamil's fence and encroach to his side by 2 Inches? Due to it is exactly reverse condition. If the motion denied then original decision also dismissed?

May be I need file motion to execute owner right on that 2 inches land. If it denied then the denial can is evidence of violate NY CLS RPAPL §871.

Summary:

The court support Mr. Jamil continues to occupy my land. The decision is the evidence of the court support people use encroachment method to occupy other people's land. It opens the door for Mr. Jamil do "adverse possession". It also opens the door for aggressive people to encroach to other people's land.

That is why the court cannot answer any of my clarification questions. The court system should not support people to occupy other people's land.

I am the owner of that 2 inches land. I have the right to use that 2 inches land. Mr. Jamil does not have the right to use my land. Move all Mr. Jamil's fence posts out of my land.

Attach files for the court of appeals only as required.

1. The decision and order or judgment from which I seek leave to appeal.
January 20, 2009. Appellate Division Second Judicial Dept.
2. The lower court order determination appealed to appellate division.
Mar 27, 2008. Queens Supreme Court.
3. The Appellate division order denying leave to appeal to this Court.
May 22, 2009. Appellate Division Second Judicial Dept.
4. A copy of Record and Brief. Oct 21, 2008
5. A copy of respondent brief. (Mistake marked as "REPLAY") Nov 10, 2008
6. A copy of reply brief. (Marked as "Answer to Replay Brief") Dec 10, 2008
5. A letter from Appellate division shows files entered and when I get copy of deny for leave to appeal court. It also shows no service entered by Mr. Jamil side so 30 days limitation does not apply.

This is the last page of motion.

Date: October , 2009 S/ Zhuang Li Cai

Reference mapping:

[1] "Replay brief" respondent brief page 1 -> "94", line 9

[2] Record page 40 item 14 -> "68", item 14 to 19

[3] Record page 26 Exhibit H , -> "59",

[4] Exhibit I -> "60"

[5] Record page 46 -> "71" Exhibit B

[6] page 106 Exhibit D -> "136"

[7] (page 3) -> "26" , line 18 fences

[8] (On page 4 - 6) -> "27" line 27 Wing Ming case.

Opposition to move to court of appeal

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPT. Index No.: 2009-4456

ZHUANG LI Cal Petitioner
- Against -
MD JAMIL UDDIN Respondent.

STATE OF NEW YORK)
)SS.:
COUNTY OF QUEENS)

MD Jamil Uddin, being duly sworn deposes and says:

1. I am the Respondent in the above entitled action and familiar with the facts and circumstances herein.

2. This Affidavit is respectfully submitted in opposition to the Motion of Zhuang Li Cai for leave to appeal to the Court of Appeals.

STATEMENT OF FACTS

3. Zhuang Li Cal commenced an action in the Supreme Court Queens County (Index Number 2789 1/07). A copy of the Petition is annexed hereto and marked Exhibit "A".

4. After a full hearing, the Honorable Charles J. Markey issued a Decision and Order dated March 18, 2008. Annexed hereto and marked Exhibit "B", is a copy of the Decision.

5. Mr. Cal filed an Appeal to the Decision of the Honorable Charles J. Markey. Annexed hereto and marked Exhibit "C", is a copy of the Appellant's Brief and annexed hereto and marked Exhibit "D", is a copy of the Respondent's Brief.

6. The Appellate Division rendered a Decision on January 20, 2009, upholding the Decision of the Honorable Charles J. Markey. Annexed hereto and marked Exhibit "E", is a copy of the Decision of the Appellate Division.

ARGUMENT OPPOSING MOTION

7. The Supreme Court found that a post, not the fence may have encroached over the property line by approximately two inches (2"). The Court found that this was truly de minimus and did not justify the relief Mr. Cai petitioned seeking to remove the fence and pay Five Thousand Dollars ($5,000) for "processing" and rebuilding the fence.

8. There was no evidence offered that the two inch (2") portion of a fence post altered or impeded the use of Mr. Cai's property.

9. There was no evidence offered that the two inch (2") portion of a fence post reduced the value of Mr. Cal's property other than the general, non specific, unsubstantiated claim of Mr. Cai.

10. In this Motion for Leave to Appeal, Mr. Cai argues that your affiant has a "Superior right" over "the landowner". It is respectfully submitted that I have made no claim against any portion of Mr. Cai's property. With all due respect the Supreme Court merely decided that there was no encroachment or if there was an encroachment it was truly de minimus and did not justify the relief sought by Mr. Cal.

11. Mr. Cal raised on argument that he was denied his constitutional rights and he alleges that "my peaceful life destroyed by Mr. Jamil's encroachment".

12. It is incredible that Mr. Cai lacks perspective. He has taken an alleged encroachment of a fence post onto his property by not more than two inches (2") and has literally become obsessed to the extent be imagines that his life is destroyed (see page "5" of Cai's Motion for Leave to Appeal[1]) by reason of the

fence post encroaching onto his property by two inches (2").

13. Mr. Cal has raised several new issues in his Motion for Leave to Appeal:

a. Mr. Cai makes an argument regarding Adverse Possession. However, the issue of Adverse Possession was not raised in the original Petition nor was the issue of Adverse Possession raised in the Appellate Division.

b. The Motion for Leave to Appeal alleges that the removal of a prior fence was improper. However, the removal of the former fence was not raised in the original Petition.

c. On page "8" of the Affidavit in Support of the Motion for Leave to Appeal[2], Mr. Cal indicates that he is raising his claim from Five Thousand Dollars ($5,000) as set forth in the Petition to Forty Nine Thousand Dollars ($49,000) (see page "9" of Mr. Cai's application[3]).

d. Mr. Cai alleges on page "9" of his Motion for Leave to Appeal that the "two inch (2") encroachment ... created further safety hazard"[4]. No evidence was offered at Trial to support an argument that there was a safety hazard.

e. Mr. Cai alleges that the fence post makes his property "unmarketable" (see page "9" of Cal's Motion for Leave to Appeal)[5]. Not only is the allegation blatantly false there was no allegation in the original Petition that the property was "unmarketable". No expert witness testified before the Honorable Charles J. Markey at the original hearing regarding marketability of title.

14. It is apparent that Mr. Cal does not understand the "de minimis" concept.

15. Mr. Cai asked the Appellate Division for an explanation of the term de minimis.

16. The Motion for Leave for Appeal confirms that Mr. Cal still does not comprehend the notion of a "de miniinis" encroachment.

17. Mr. Cai has bene given every opportunity to pursue his Petition to remove the fence between his property and my property and he has been given every opportunity to argue his claim to remove Five Thousand Dollars ($5,000).
However, after thorough consideration, both the Honorable Charles J. Mackey and the Appellate Division have rejected his Petition.
18. There is no basis for granting leave to appeal the Decision of the Appellate Division.

WHEREFORE, your affiant respectfully prays for an Order denying the Motion for Leave to Appeal to the Court of Appeals and for such other and further relief as this Court deems just and proper.

S/Jamil Uddin 10th day of November 2009.
Notary Public: S/ RICHARD N. GOLDEN

#Note: There are exhibits with this opposition which are map to Appendix#
Exhibit A: initial motion in queen court
Exhibit B: Queens court decision
Exhibit C: Petitioner Brief.
Exhibit D: Respondent Brief
Exhibit E: Appellate Division decision.

Reference mapping:

[1] page "5" of Cai's Motion for Leave to Appeal ->-17-, item 4.

[2] On page "8" of the Affidavit in Support of the Motion for Leave to Appeal -> -22-, item 9

[3] page "9" of Mr. Cai's application -> -32- item 2, 4th paragraph. (Mr. Jamil made reference error. Correction made)

[4] page "9" of Mr. Cai's application "safety hazard" ->-20-, item 7

[5] page "9" of Mr. Cai's application "unmarketable" ->-21-, item 8

Decision and order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: IAS PART 32
Index No. 27891/2007

ZHUANG LI CAI Petitioner
-- against --
M.D. JAMIL UDDIN Respondent

Papers read: Notice of Motion - 1; Affidavit in Opposition - 2

CHARLES J. MARKEY, J.:

Petitioner seeks the removal of a fence of his neighbor, the respondent, claimed to encroach upon petitioner's neighbor. The Court has considered the papers of petitioner and considered all the testimony, exhibits, including photographs and surveys, and extensive arguments taken at the hearing conducted by the undersigned on January 31, 2008.

Based upon the testimony and the evidence, the Court concludes that the fence does not extend into the petitioner's property at all and that only the posts to the fence extend beyond the line, and that the encroachment of the posts is truly minimal Such a de minimis encroachment of the posts, and not the fence hardly suffices to support the relief sought in the notice of petition (Wing Ming Properties (U.S.A) Ltd v Mott Operating Corp, 79 NY2d 1021, 1023(1992) [encroachment was 'de minimis at best" that neither justified injunctive relief nor monetary damages "Indeed, plaintiff has not alleged or demonstrated on the record before us That these slight variations negatively affected its property value in any measure "]) The requests for relief are, therefore, in all respects, DENIED.

The Court orders that the petition is, in all respects, DISMISSED

Counsel for respondent shall serve a copy of this decision and order upon the petitioner bearing the County Clerk's stamp of its recording together with notice of entry.

The foregoing constitutes the decision, order, and opinion of the Court.

S/ Hon. Charles J. Markey
Justice, Supreme Court, Queens County

Dated: Long Island City, New York March 18, 2008
Appearances: Petitioner pro se
For Respondent: Richard N. Golden, P.C., 118-35 Queens Blvd., suite 1220, Forest Hills, NY 11375, tel. No., 718-261-2600

Decision & Order
Supreme Court of the State of New York
Appellate Division: Second Judicial Department
D21873 O/kmg _AD3d_
Submitted – December 16, 2008
REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.
2008-04456 (Index No. 2789 1/07)

In the Matter of
Zhuang Li Cai, appellant,
v
M.D. Jamil Uddin, respondent.

Zhuang Li Cai, Forest Hills, N.Y., appellant pro Se.

Richard N. Golden, P.C., Forest Hills, N.Y., for respondent.

In a "proceeding" to compel M.D. Jamil Uddin to remove a portion of his fence from where it allegedly encroaches on the petitioner's property, and to recover damages resulting from such alleged encroachment, the appeal is from an order of the Supreme Court, Queens County (Markey, J.), dated March 18, 2008, which dismissed the petition.

ORDERED that the order is affirmed, with costs.

The evidence before the Supreme Court established that, at most, the alleged encroachment onto the appellant's property consisted of one or more fenceposts intruding onto the property by approximately two inches. Under the particular

circumstances of this case, the Supreme Court properly concluded, based on the record before it, that the alleged encroachment was de minimis and properly denied the appellant's request to compel the respondent to remove the alleged encroachment (see Wing Ming Props. {US.A.] v Mott Operating Corp., 79 NY2d 1021; Hoffmann Invs. Corp. v Yuval, 33 AD3d 511; Generalow v Steinberger, 131 AD2d 634; but see Robert v Kohs, 35 AD3d 178). Moreover, based on the de minimis character of the alleged encroachment and the complete absence of any evidence to support the appellant's claim for damages, the Supreme Court properly declined to award the appellant any damages (see Wing Ming Props. [US.A.] v Mott Operating Corp., 79 NY2d at 1023; see also Generalow v Steinberger, 131 AD2d at 635).

RIVERA, J.P., SANTUCCI, CARNI and DICKERSON, JJ., concur.

ENTER: S/ James Edward Pelzer
Clerk of the Court

Initial petition

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS
index No: 27891/07

In the Matter of the Application of
Zhuang Li Cai Petitioner(S)
-against-
M.D. Jamil Uddin_ Respondent (s)

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF QUEENS:

The petition of Zhuang li cai respectfully shows to this Court as follows:

1) Your petitioner(s) resides at 9934 67rd apt 1A, forest hills, NY 11375

2) The respondent(s) is/are M.D. Jamil Uddin, 3406 60st woodside NY 11377-2113.

3) See attachment. (one page)

...

7) Attached hereto as Appendix/Appendices is/are copies of relevant documents showing petitioner's right to win this case, including determination(s) issued by respondent(s) that have a bearing on this case and/or of which petitioner's hererin complains, if any. These documents are Exhibit from A to N, Court file has two original survey maps.

8) A prior application has not been made for the relief requested herein.

WHEREFORE, your deponent prays that this Court: Remove all fence posts from my property, located at 37-43 60st woodside, NY 11377 and pay $5000 for processing expense and rebuild my fence. And such other relief as the Court may find just and proper.

Date: Queens, New York
November 7, 2007 S/ zhuang Li Cai

Attachment:

1. My 50 years old chain fence removed by 3741 60st, woodside owner Mr. M.D. Jamil Uddin. Only few posts left. **Exhibit F**: shows the far end of the post marked as "1" and where the old chain fence foundation located. **Exhibit G**: shows enlarged far end post. **Exhibit H**: shows the post at front edge of my house "2" and the sidewalk post "3" and the iron fence "4". Please **notice that the iron fence "4" is 2 Inch off the property line.**

2. Before he put his new 4 Inch wide fence. I told Mr. Jamil not cross the property line and he signed agreement (**Exhibit A**). I also show my survey map which I got from building department (**Exhibit B**)

3. After he put his fence post cross the line, he told me he has the survey and the boundary line is 2+ Inch inside of my side walk Then I ask "Island Wide Land Surveyors" put the property boundary markers (4 orange cutting markers) ($500, **Exhibit I, Exhibit L, Exhibit M, Exhibit N**). I also ask "NY Land Surveyor, LLC" do the survey map for avoid the error ($500, **Exhibit D**).

4. Mr. Jamil removed the property line marker. So I ask "Island Wide Land Surveyors" does it again and give me their survey map. ($500. **Exhibit C** and **Exhibit J**)

5. I explain to Mr. Jamil how property line defined and the error margin and also tell him I found it is possible his other side boundary line problem. I ask Mr. Jamil remove his fence post with in 10 days. But he did not remove his post. Then I inform Mr. Jamil remove his post and pay $1500 within 30 days.

6. Mr Jamil removes the property mark again. Near end of 30 day Mr. Jamil call me up said to meet his contractor to see solutions. But I found he put his

property marks (2 red paints **Exhibit H, Exhibit M**). I call him and told him that is NOT professional work and not acceptable. Later a person call me said he is Jamil's friend. I said I only tall to Jamil. I call Jamil but he told me that person is his surveyor he want settle with me privately.

7. How property boundary line defined:
To allocated property line is 200 feet from edge of 38 Ave and 425 feet from 39 Ave.

8. The error margin: I told both my surveyors I need 100% accuracy for court use. "NY Land Surveyor, LLC" told me that the first take.error is less than '/4 Inch normally each survey need 2 takes in 2 different date. Their job is 100% accuracy. The "Island Wide Land Surveyors" told me that the survey is good for the court.

9. The motivation: The reason for Mr. Jamil want get 2+ Inch from my property line is he lost about 1+ Inch from his north boundary with 3739 6Ost. I learn that from several months fight with Mr. Jamil. **There is a law said if the owner do not bring the invader to the court the owner may lost his property.** That is why I have to bring Mr. Jamil to the court and Mr. Jamil want settle privately. I do believe Mr. Jamil fully understand what happened.

agreement

1. the property line is along the edge of sidwalk
2. The fency post not cross the property line

Md. [illegible]
Owner, 37-41, 60ST

Zhuang Ci Cong
Owner: 3763 60St

Exhibit A: Agreement signed by Mr. Junii

Exhibit B: Survey map from building department (45+ years)

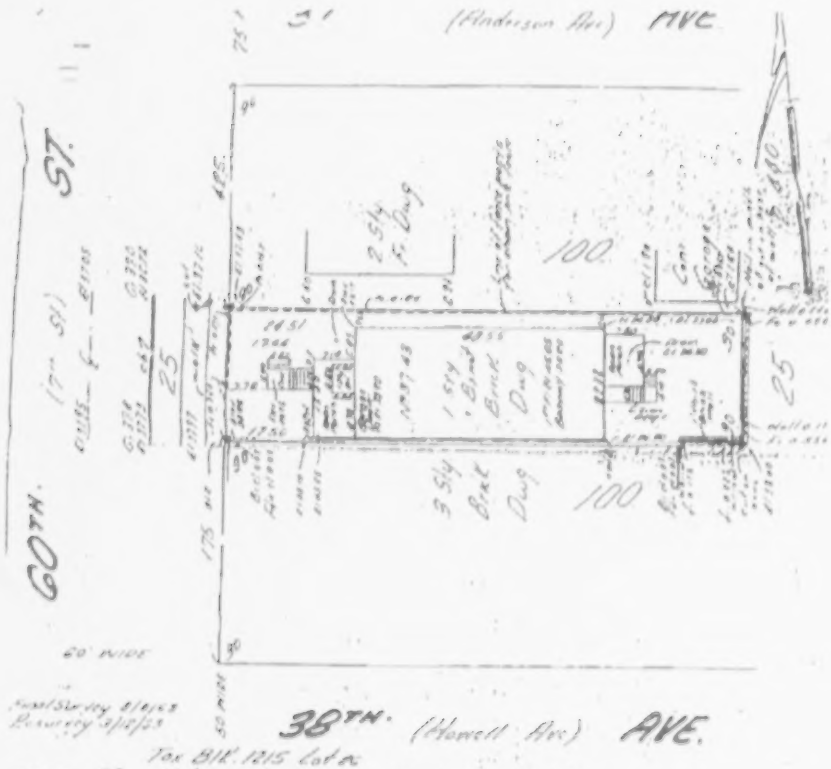


Exhibit B: Survey map from building department (45+ years)

BEST AVAILABLE COPY

!!Format enlargement 2.60 to property line and chain fence inside of property line, 175' to 38 ave,!!

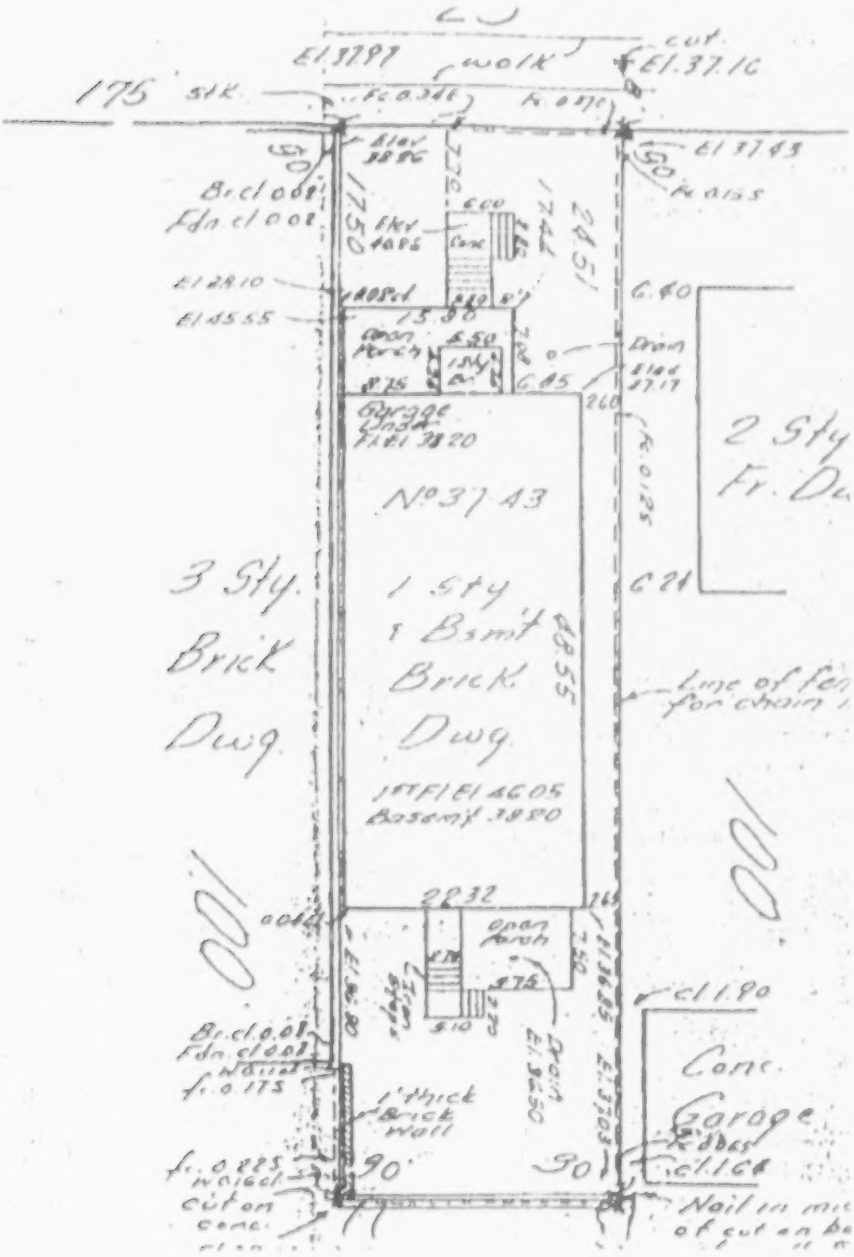


Exhibit C:

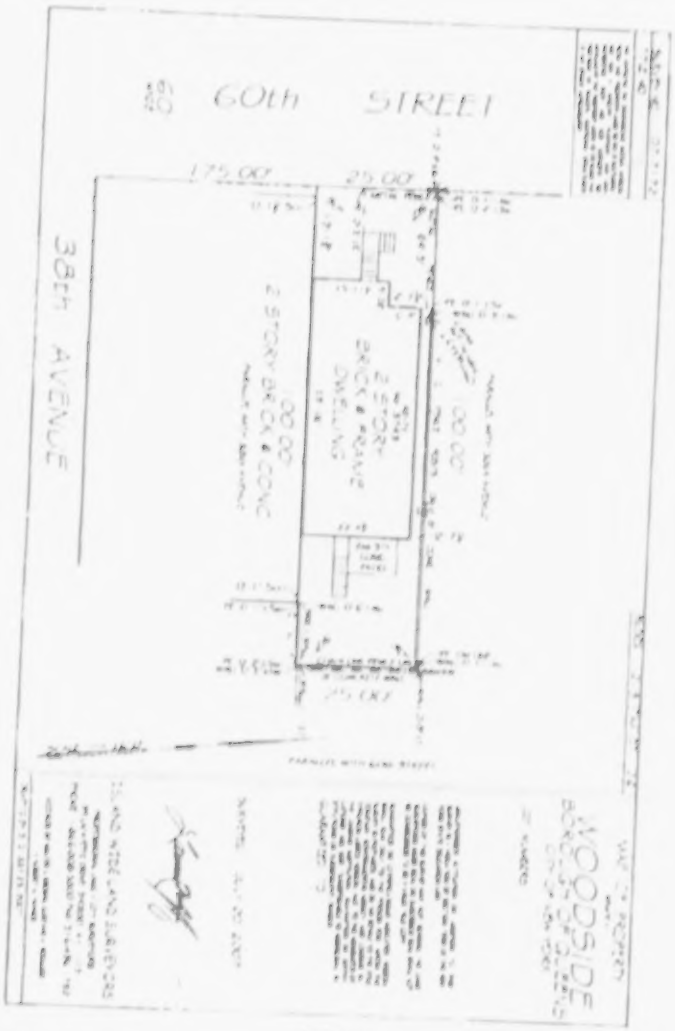


Exhibit C

!!Format enlargement 2' 7 ¼ " = 2.601' property line, 175' to 38 ave, Upside is 60st !!

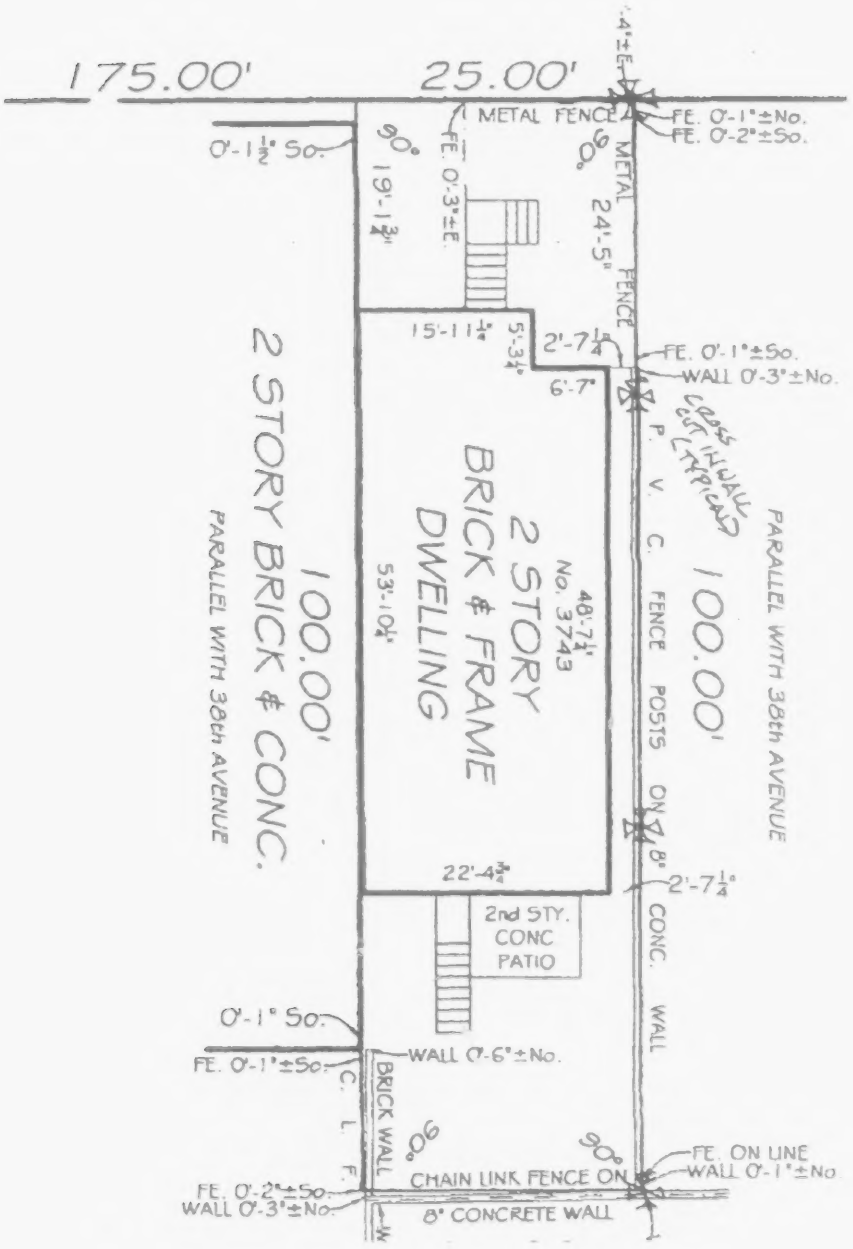


Exhibit D:

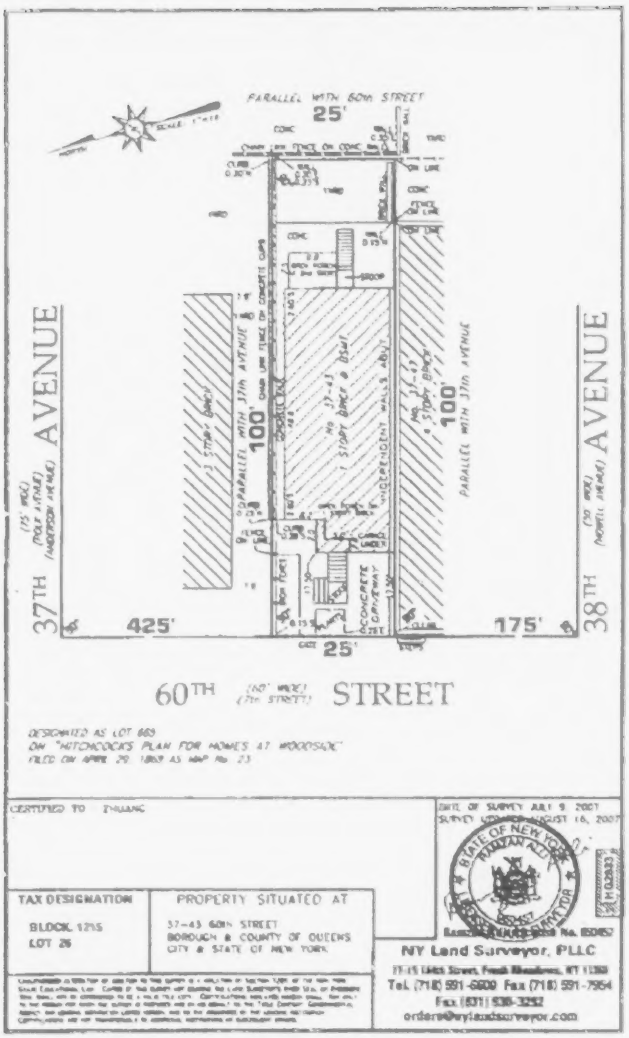


Exhibit D:

!!Format enlargement 2.60's property line, 175' to 38 ave, Upside is 60st!!

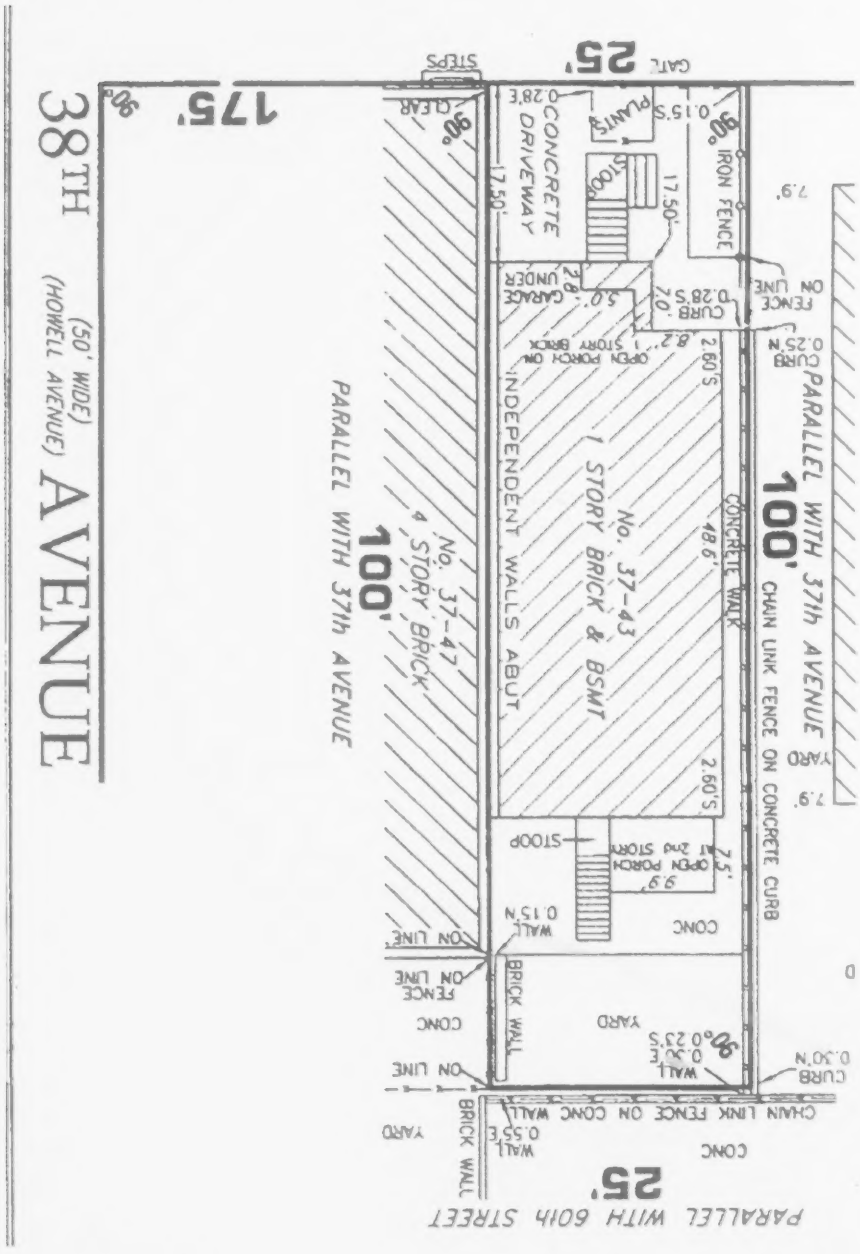
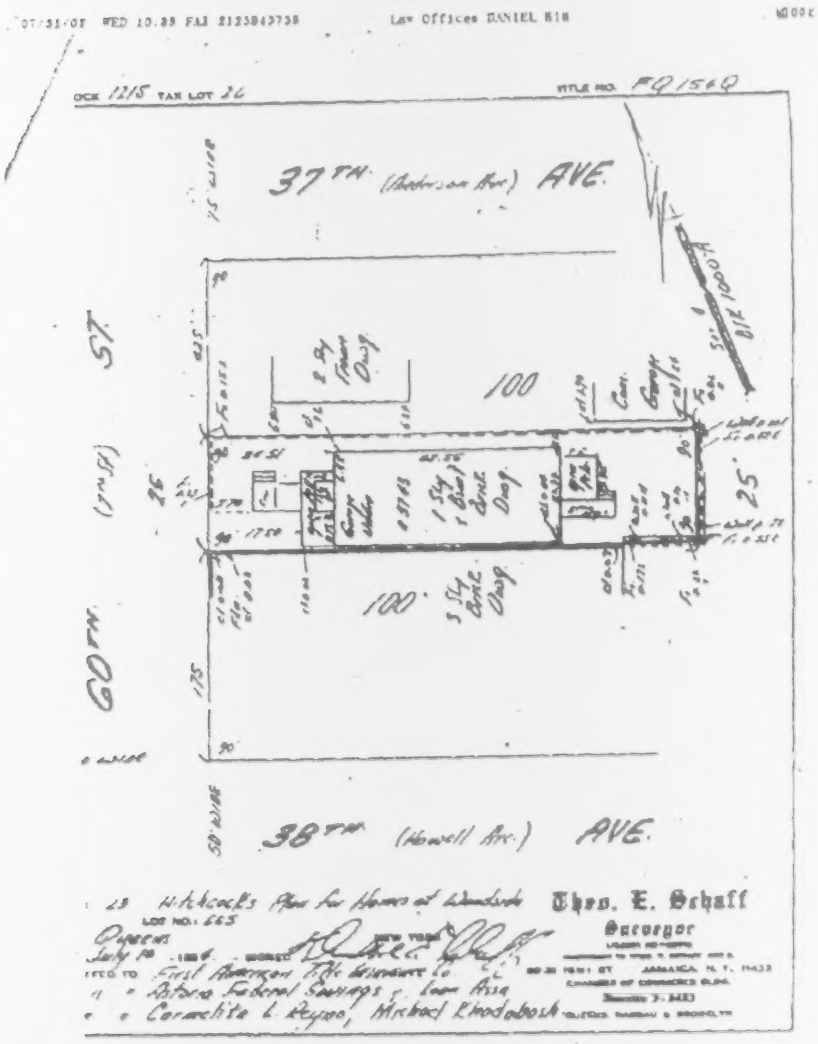


Exhibit E: Survey map from previous seller lawyer (20+ years)



!!Format enlargement 2.6 property line, 175' to 38 ave, Upside is 60st!!

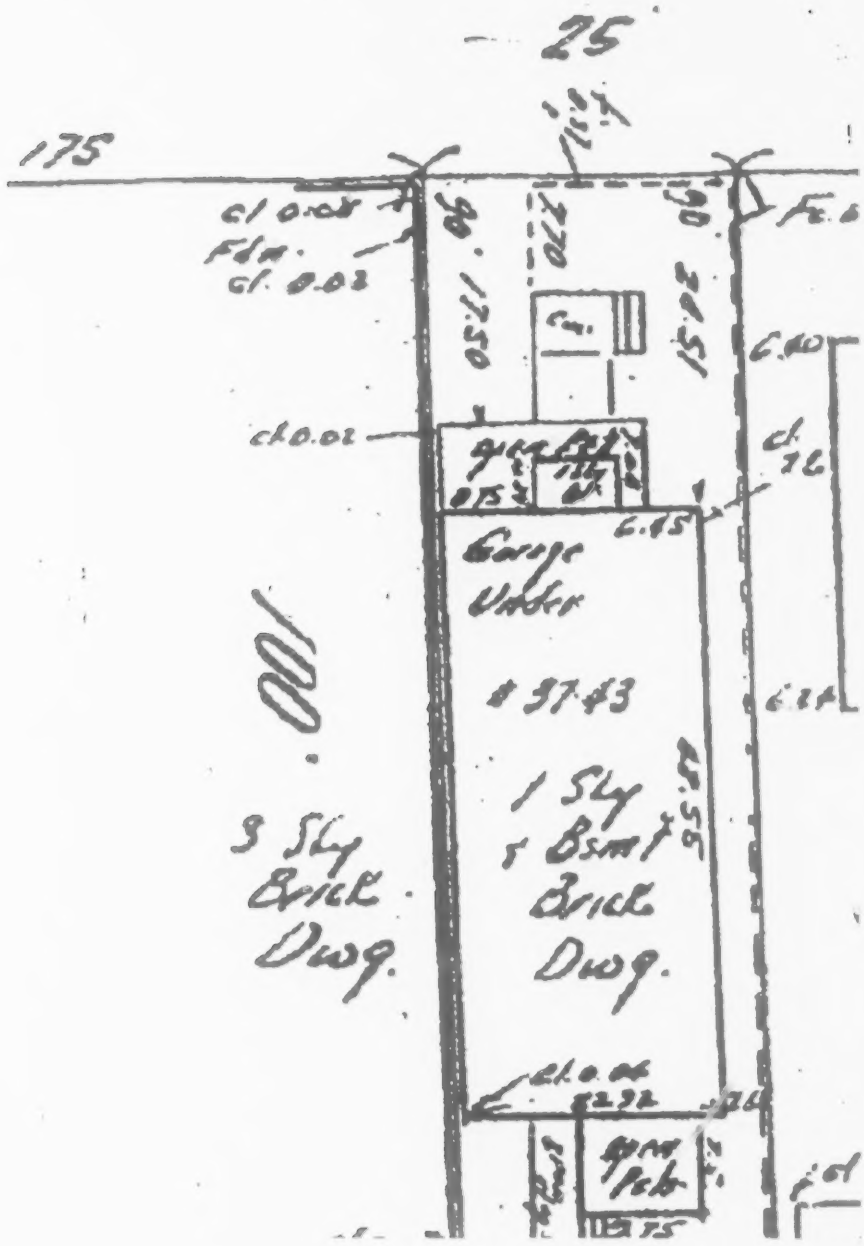


Exhibit F: Show far end original post "1" and original chain fence foundation.

Exhibit G: Show far end post "1" location enlargement.

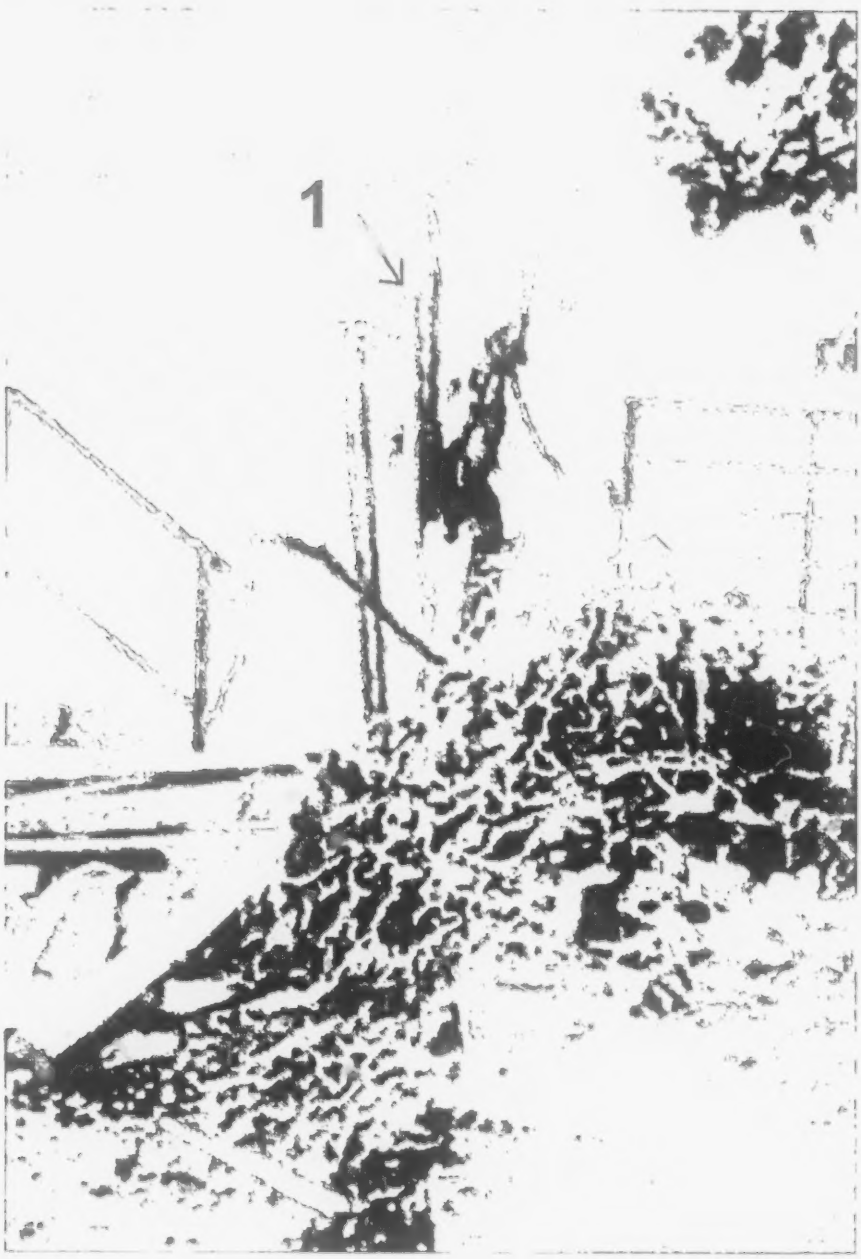


Exhibit H: Show middle original post "2" (Still exist now).front original post "3" (take down by Mr. Jamil. later). The iron fence "4" shift 2+ inch inside of property line.

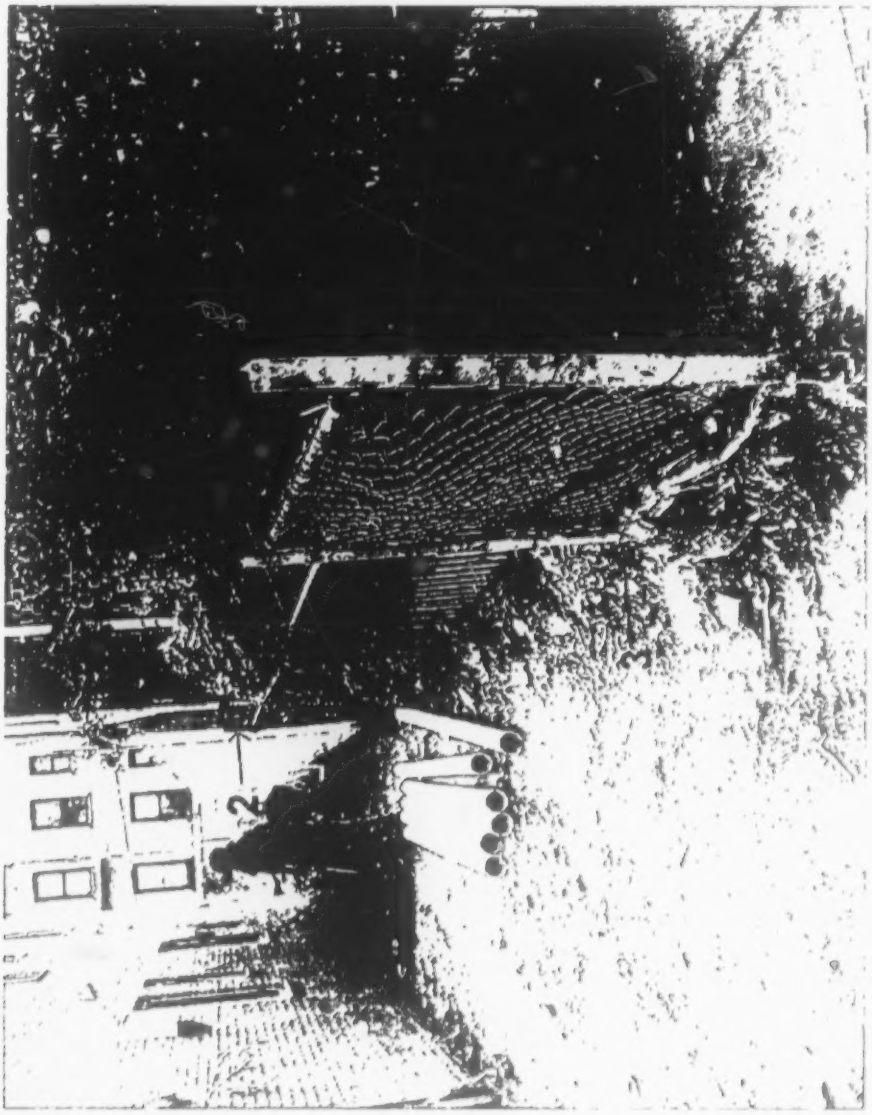


Exhibit I: Show the first property mark (orange with nail. Removed by Mr. Jamil) The iron fence "4" shift 2+ Inch inside of property line.

Exhibit J: Show the first property mark (Orange with cut. Put on second time. The iron fence "4" shift 2+ inch inside of property line. Later covered by Mr. Jamil)

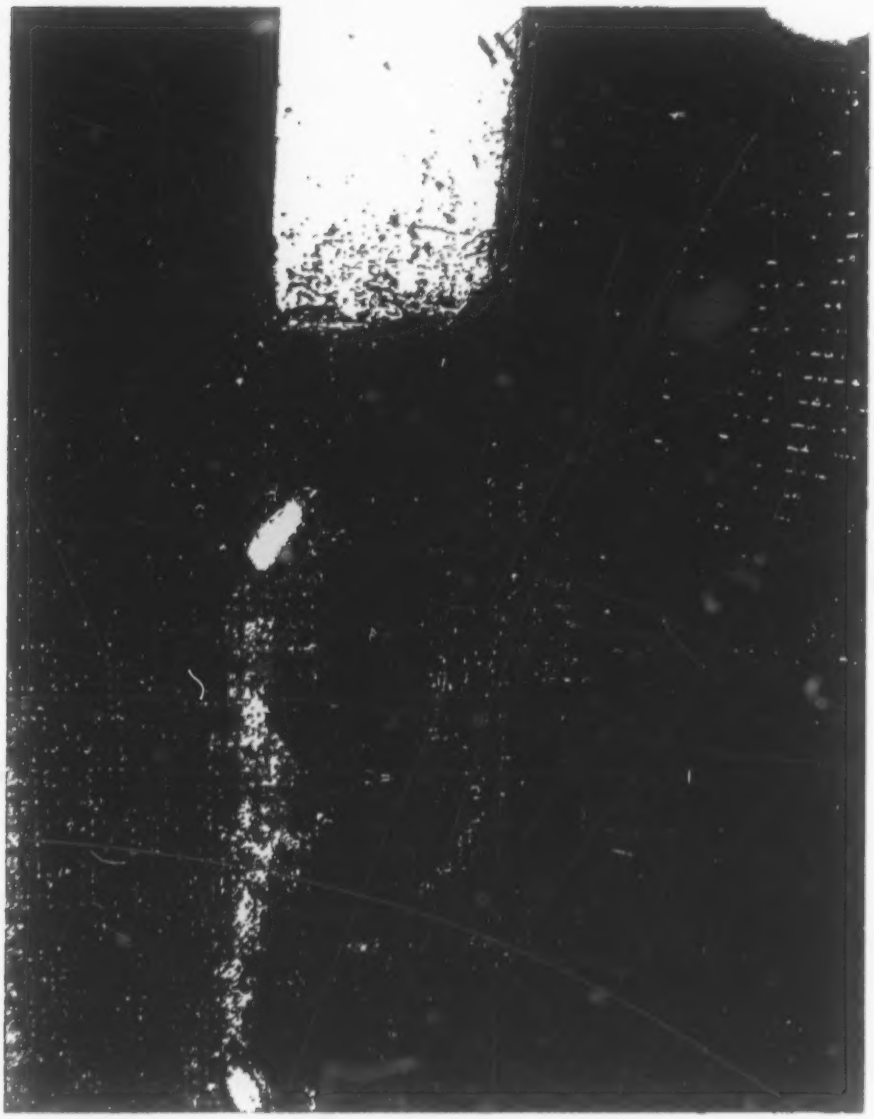


Exhibit K: Show the first property mark (red pait, put on by Mr. Jamil). The iron fence "4" shift 2+ inch inside of property line.

Exhibit L: Show the middle original post and second property mark (Orange cut). !!**Format note: The orange cut is a cross "+" near bottom of this photo!!**

Exhibit M: Show the third property mark (orange cut). The second Mr. Jamil mark(red paint) 2+ inch different.

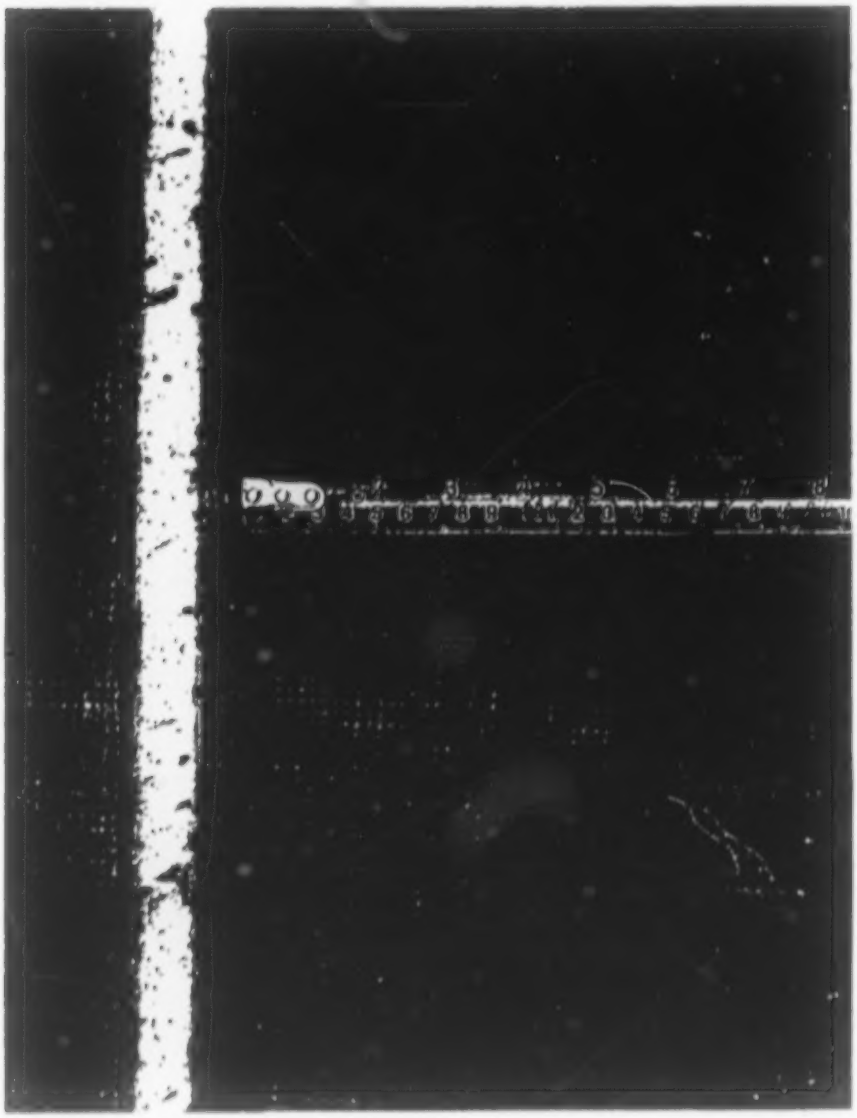


Exhibit N: Show the forth property mark (orange cut) The Mr. Jamil's post is 2+ inch crossing the board.

Respondent initial opposition

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS Index No.: 2789 1/07

ZHUANG LI CAI Plaintiff(s)
-against-
MD JAMIL UDDIN Defendant(s)

STATE OF NEW YORE)
)SS.:
COUNTY OF QUEENS)

MD Jamil Uddin, being duly sworn deposes and says:

1.) This Affidavit is respectfully submitted in opposition to Motion of Zhuang Li Cai.

2.) I am the owner of the premises known as 37-41 60th Street, Woodside, New York, and familiar with the facts and circumstances herein.

3.) The property owned by Plaintiff in this proceeding is located immediately to the south of my property and known as 37-43 60th Street, Woodside, New York.

4.) The Plaintiffs broken drainage pipes on his property at 37-43 60th Street, Woodside, New York, diverted rainwater onto my property at 37-41 60th Street, Woodside, New York

5) The grading of the plaintiffs property sloping downward toward your affiant's property and the drainage pipes diverting water to the northerly side of the plaintiffs property was causing erosion and

threatening property damage to my home and the contents of my home.

6.) Your affiant advised Plaintiff of his intent to construct a cement "wall" about six (6) inches high with a vinyl fence above the six (6) inch wall to provide privacy and more importantly to prevent the water and mud from flowing in a northerly direction onto my property.

7.) After discussion with Mr. Cai we signed an agreement acknowledging the property line is "along the edge of the sidewalk". Annexed hereto and marked Exhibit "A", is a copy of the Agreement.

8.) Prior to the construction of the wall approximately six (6) inches high, Albert A. Bianco, a Surveyor was retained by your affiant, the Defendant herein, to mark the property line between 37-43 60th Street, Woodside, New York, and 37-41 60th Street, Woodside, New York.

9) An old fence partly broken and bending onto the defendant's property was on the property line before the new six inch wall and vinyl fence was installed. A photograph of the old fence is annexed hereto and marked as Exhibit "B".

10) The plaintiff approved the removal of the old fence.

11) The old fence was replaced by the six (6) inch wall and vinyl fence constructed on the northerly side of defendant's southern property line and adjacent to the sidewalk of Mr. Cai's property known as 37-43 60th Street, Woodside, New York. At no point did the fence cross over the plaintiff's sidewalk.

12.) The construction of a vinyl fence between 37-41 60th Street, Woodside, New York, and 37-43 60th Street, Woodside, New York, was completed on or about July 1, 2007.

13.) After the construction of a fence, a Survey of the property was prepared by Albert A. Bianco, professional land Surveyor on or about August 21, 2007. Annexed hereto and marked Exhibit "C", is a copy of the Survey of Albert A. Bianco dated August 21, 2007.

14.) The Survey of Albert A. Bianco shows the vinyl fence on the southerly property line of the premises known as 37-41 60th Street, Woodside, New York, to be either on the property line or slightly to the north of the property line onto the premises known as 37-41 60th Street, Woodside, New York, the property owned by the defendant.

15.) After Plaintiff advised your affiant that the fence was encroaching onto the property at 37-43 60th Street, Woodside, New York, a second Survey was ordered.

16.) A&P Engineering and Land Surveying P.C. made a Survey of the premises on or about October 3, 2007. Annexed hereto and marked Exhibit "D", is a copy of the Survey of A&P Engineering and Land Surveying, P.C. dated October 3, 2007.

17.) The Survey of A&P Engineering and Land Surveying, P.C. shows a vinyl fence directly on the southerly property line between 37-4 1 60th Street, Woodside, New York, and 37-43 60th Street, Woodside, New York.

18.) Prior to the commencement of this action, Defendant showed the Plaintiff copies of the Survey made on August 21, 2007 and the property line

markings made by the surveyor between the two properties.

19.) Despite proof that the fence was not encroaching onto plaintiffs property, the plaintiff nevertheless commenced this action against your affiant..

20) As a result of the false accusations made by plaintiff your affiant has incurred the expense of hiring a second survey (See Exhibit "D") at a cost of $650

21.) Defendant has also incurred One Thousand Five Hundred Dollars ($1,500) of legal fees.

22) By reason of this baseless action, the defendant has sustained costs of $2,150.

WHEREFORE, Defendant prays for an Order dismissing the Motion and an Order directing plaintiff, Zhuang Li Cai, to pay to the defendant MD Jamil Uddin Two Thousand One Hundred Fifty for costs incurred together with such other and further relief as this Court deems just and proper.

S/ MD Jaiml Uddin, Notary Public S/ Richard N. GOLDEN

Exhibit A:

agreement

1. the property line is along the edg of sidwalk.

2. The fency post not cross the property line.

Md. [redacted]

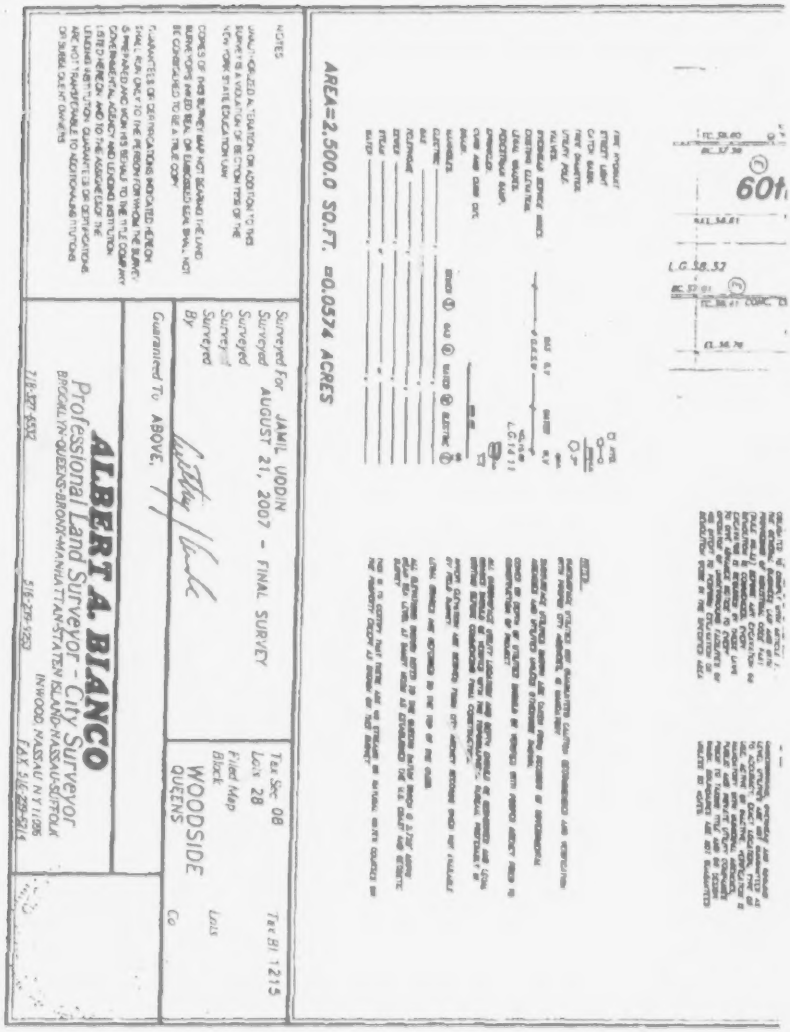
owner, 37-41, 60ST

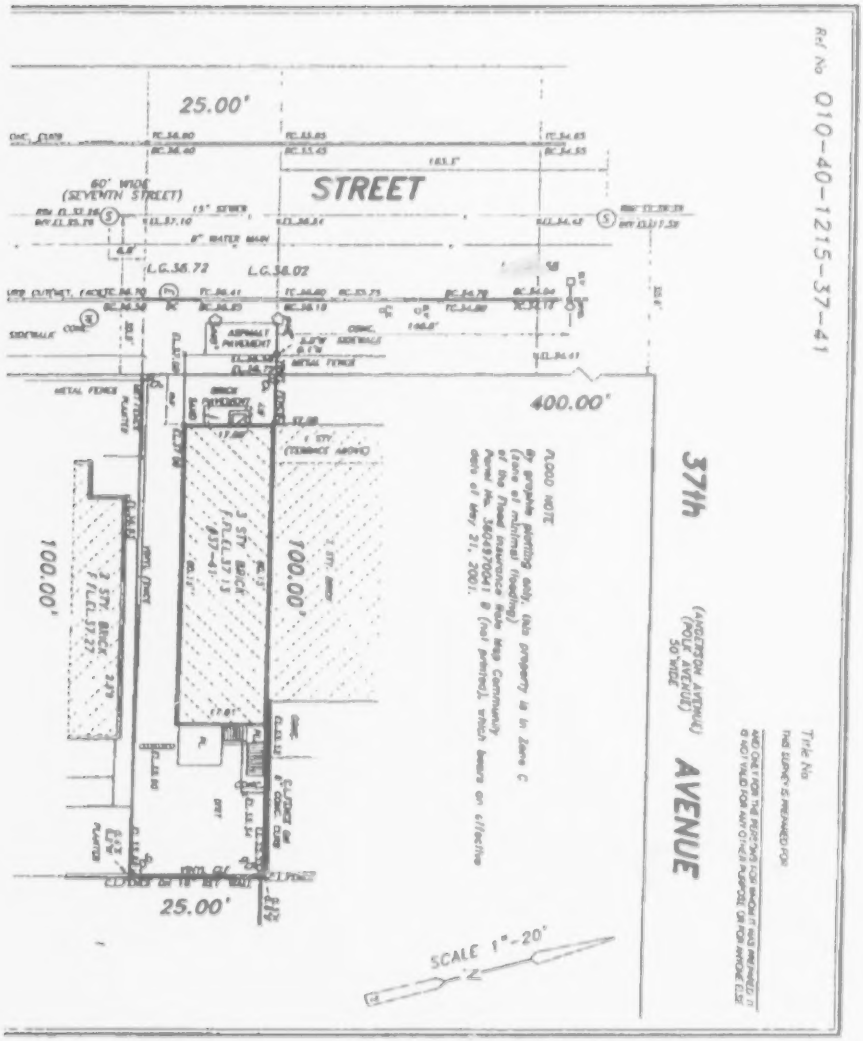
zhuang Ci Cong

owner: 3743 60St

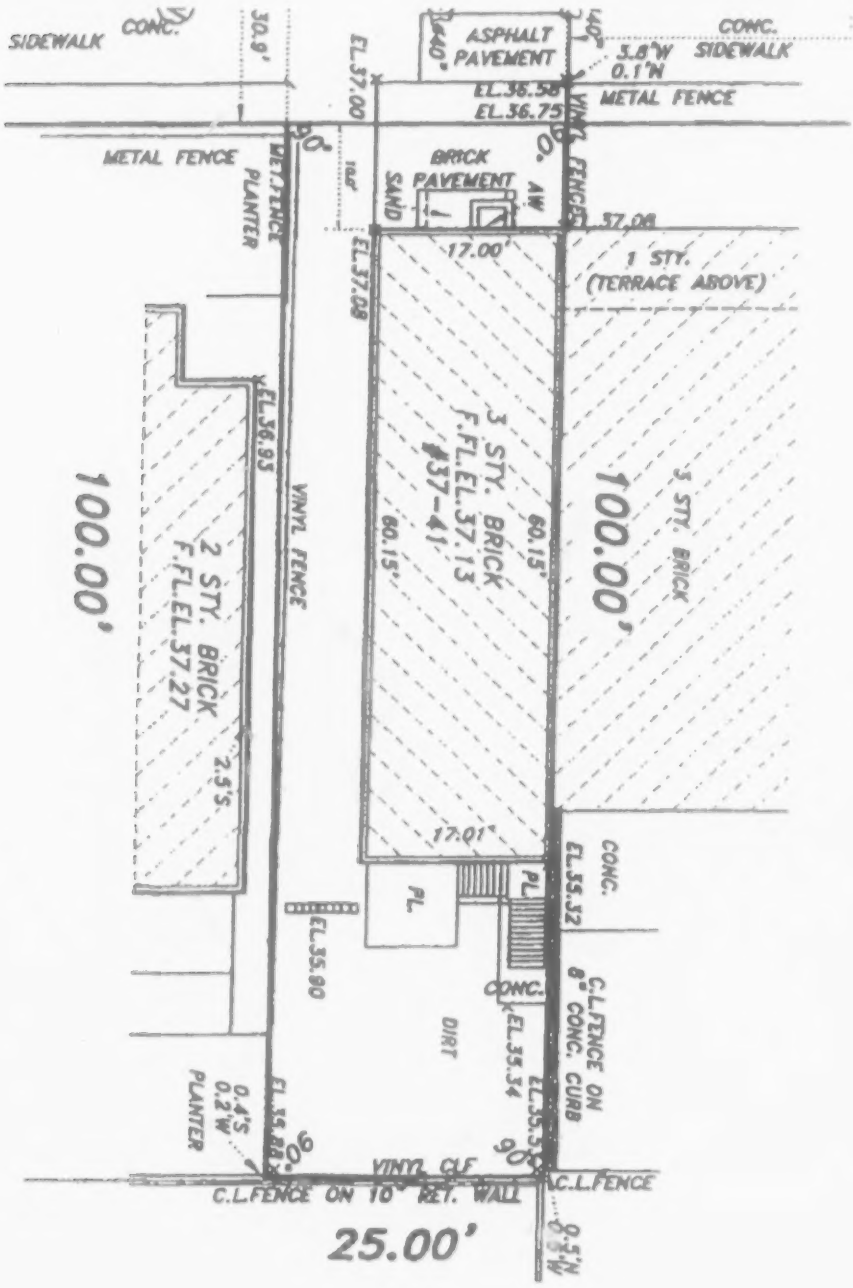
Exhibit B:

Exhibit C:


AREA=2,500.0 SQ.FT. =0.0574 ACRES
NOTES
Surveyed For JAMIL UDDIN
Surveyed AUGUST 21, 2007 - FINAL SURVEY
Surveyed
Surveyed By
Guaranteed To ABOVE.
Tax Sec 08
Lots 28
Filed Map
Block
WOODSIDE
QUEENS
Tax Bl 1215
Lots
Co
ALBERT A. BIANCO
Professional Land Surveyor - City Surveyor
BROOKLYN-QUEENS-BRONX-MANHATTAN-STATEN ISLAND-NASSAU-SUFFOLK
INWOOD, NASSAU N.Y.11096
516-239-1520
FAX 516-239-5514


Ref No 010-40-1215-37-41
25.00'
STREET
60' WIDE
(SEVENTH STREET)
400.00'
100.00'
100.00'
25.00'
37th AVENUE
(ANDERSON AVENUE)
(POLE AVENUE)
50' WIDE
SCALE 1"=20'
FLOOD NOTE
By graphic plotting only, this property is in Zone C
(Area of minimal flooding)
of the Flood Insurance Rate Map Community
Panel No. 360497004C # (not printed), which bears an effective
date of May 21, 2001.
Title No
THIS SURVEY IS PREPARED FOR
AND ONLY FOR THE PURPOSES FOR WHICH IT WAS PREPARED. IT
IS NOT VALID FOR ANY OTHER PURPOSE OR FOR ANYONE ELSE

!!Format enlargement 2.5 property line,no how far away from Jimal Uddin's house, no 38 ave reference. upside is 60st!!



!!Format enlargement, gap between iron fence and vinyl fence, upside is 60st!!

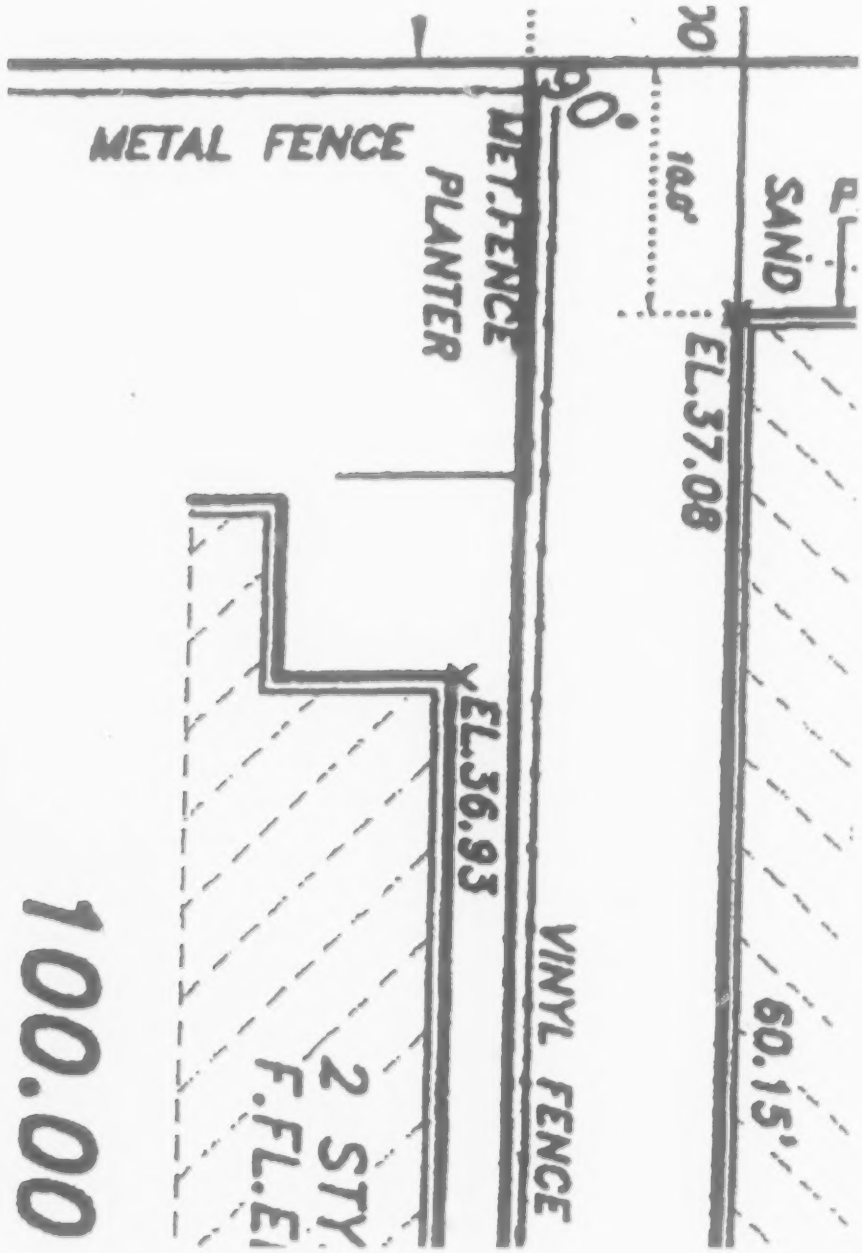
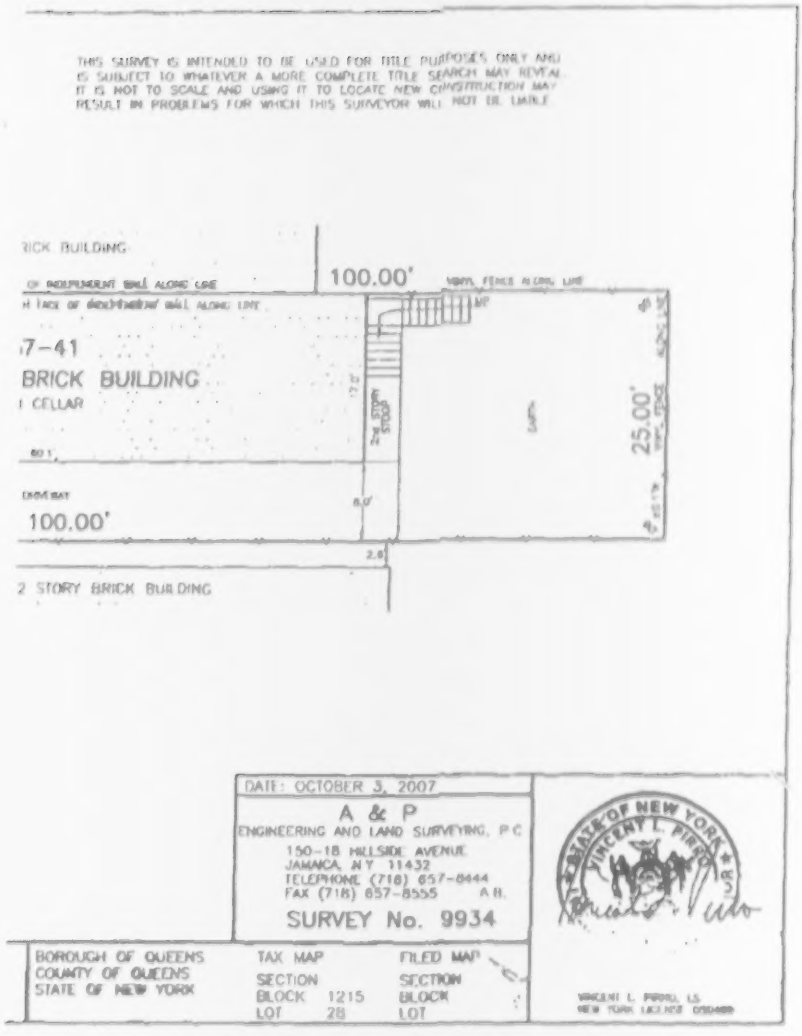
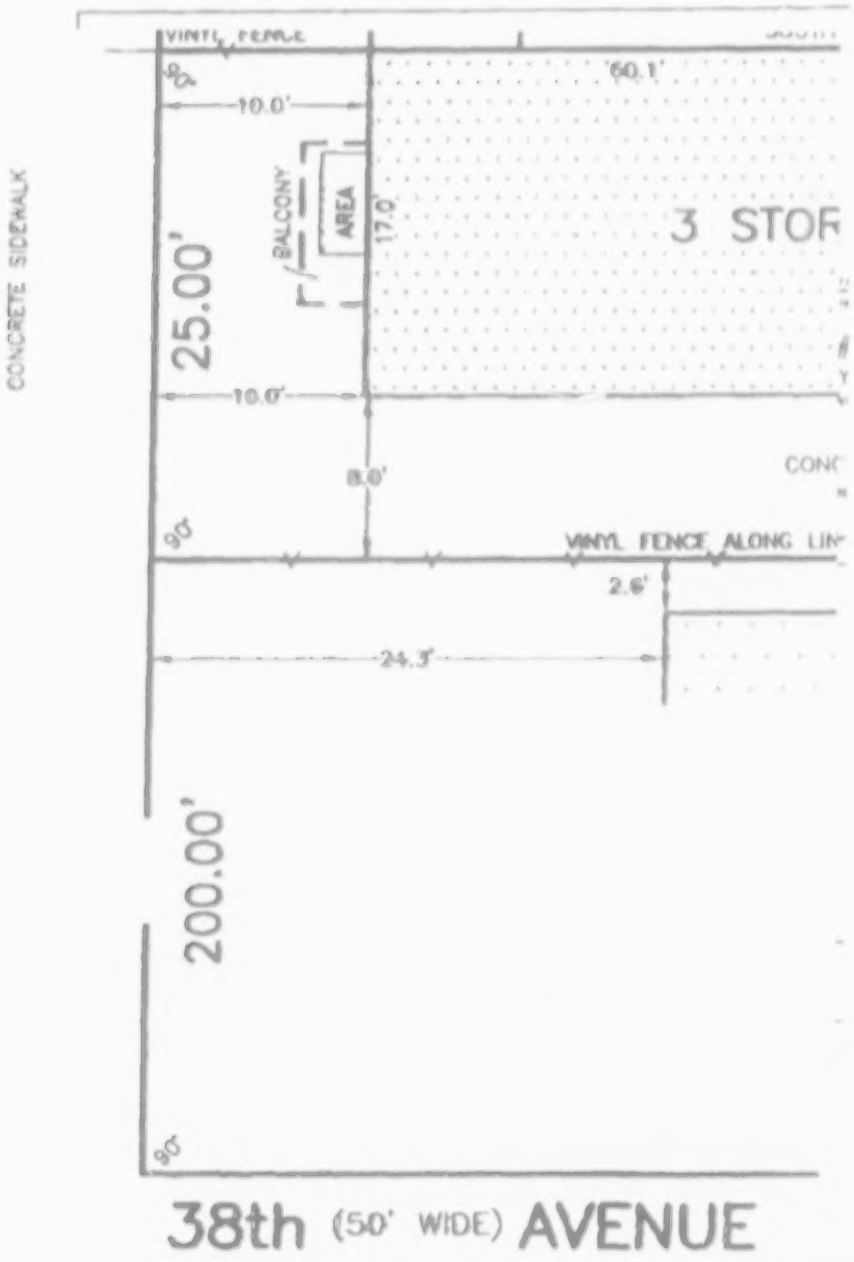


Exhibit D:


THIS SURVEY IS INTENDED TO BE USED FOR TITLE PURPOSES ONLY AND IS SUBJECT TO WHATEVER A MORE COMPLETE TITLE SEARCH MAY REVEAL. IT IS NOT TO SCALE AND USING IT TO LOCATE NEW CONSTRUCTION MAY RESULT IN PROBLEMS FOR WHICH THIS SURVEYOR WILL NOT BE LIABLE
BRICK BUILDING
100.00'
7-41
BRICK BUILDING
1 CELLAR
25.00'
100.00'
2 STORY BRICK BUILDING
DATE: OCTOBER 3, 2007
A & P
ENGINEERING AND LAND SURVEYING, P.C.
150-18 HILLSIDE AVENUE
JAMAICA, N.Y. 11432
TELEPHONE (718) 657-8444
FAX (718) 657-8555
SURVEY No. 9934
STATE OF NEW YORK
VINCENT L. PIRRO
BOROUGH OF QUEENS
COUNTY OF QUEENS
STATE OF NEW YORK
TAX MAP
SECTION
BLOCK 1215
LOT 28
FILED MAP
SECTION
BLOCK
LOT
VINCENT L. PIRRO, LS.

60th (60' WIDE) STREET
(7th STREET)
25.00'
200.00'
3 STORY
3 STORY
PORCH
38th (50' WIDE) AVENUE
(HOWELL AVENUE)
TITLE No.
CERTIFIED TO:

!!Format enlargement 2.6 property line, 200' to 38 ave reference. Left side is 60st!!



Petitioner brief in Appellate Division
New York Supreme Court
Appellate Division Second Department
Docket # 2008-4456

.....

Zhuang LI Cai Petitioner,
— against —
M.D. Jamil Uddin Respondent.

.....

I. PRELIMINARY STATEMENT

1. **The center of the fight**: Mr. Jamil build 17 feet wide house and try build 8 feet wide driver way. But on his other side neighbor attached wall over 0.1 feet so after he build new 17 feet wide house. He only has 7.9 feet from my fence. He does not have 8 feet for meet building department code. He takes down my fence and cross the property line for get extra 0.1 feet = 1.4 Inch from my property. That means my property become 24.9 feet wide. I do not want give out that 0.1 foot. It is my property. I paid Tax for it. I cannot give out that 0.1 foot. It will greatly reduce the sale position for my property. My house Certified Occupancy from building department is base on I have 2.6 feet side walkway (Record page 21, Exhibit B[1] you can see Building department seal on the bottom). As I know, the minim safety requirement for the walkway is 32Inch = 2.66 feet. Any less the 2.6 feet will put my house in violation building code position and possible lost certified occupancy.

2. **Mr. Jamil is intentional cross the boundary**:

A licensed contractor lay out the foundation they know they only have 24.9 feet. They build a 17 feet wide house without any measurable error. They know they only have 7.9 feet for driveway unless takedown my fence. In normal attachment wall structure Mr. Jamil has many options to adjust the

attached wall or other solutions so he still can get 8 feet driver way but he decide take down my fence.

3. **The Bottom line**:

If Mr. Jamil respects the property line, I will not surfer all legal burdens. I have no need to spend any money; my 40+ year's old fence only need put the post back to vertical position and can stay for very long time. I do not need spend any time on this issue. It is my property.

II. THE FACTS AND THE KNOWLEDGE, SKILL AND LOGICAL THINKING NEEDED IN UNDERSTANDING THE EVIDENCES.

Note: I found from the lower court Judgment, The court understand what I said in the court but unable to do same analysis on his own. So my brief will give details and steps to show how to do the analysis work. It may be too dumb. Please bear with me I am not lawyer. I prove things like do the math and logical science.

4. **My old fence**:

There are three section of my old fence. **The front part** is old chain fence show on Record page 26, Exhibit H^2 red point 3. It extends to part of sidewalk. The chain fence post is 2 Inch pipe. When Mr. Jamil wants take down the front part I called police for stop him.

The second section is iron fence it starts next to front old chain fence post. The iron fence post yield 2 Inch into south my side. The reason of iron fence yield 2 Inch is if replace old chain fence post with iron fence post the front extension of chain fence will lose support. The back end of iron fence is shared with old fence post pipe show on Record page 26, Exhibit H^2 red point 2.

The third section of my old fence is between red point 1 and red point 2 which I agree to take down with the condition Mr. Jamil's new fence should not cross the property line.

Mr. Golden agrees my old fence is inside of my property. See Transcript in Record page 67 line 14 to page 68 line 19[3].

5. Vinyl fence:

The vinyl fence is 6 feet tall plastic panel screw mounted on 4 by 4 Inch post. The panel with mounting bracket is about 3 Inch wide. For move the vinyl fence you only need unscrew of the panel and move the post. The post cost about $25 in Home Depot if you want replace old one.

Currently the panel is mounted close to Mr. Jamil side so it yielded about 1 Inch away from the post south edge. But due to it is screw mounted if the post not move out of my property then Mr. Jamil can move his panel more into my property with in few hours.

The vinyl fence runs like "K" as I said in the court. Both end cross property line more than 2 Inch.

Front, Record page 26-27, Exhibit H[2], I, J: The property line is 2 Inch north from Iron post. Notice the orange property line stamp.

Middle, Record page 28, Exhibit L[4], and M: notice the orange property stamp. The fence panel is a long the property line. That is what low court Judge talking about not cross the property line. The post cross the property line about 0.1 foot or 1 ¼ Inch

Back, Record page 29 Exhibit N[5]: notice the orange property stamp cross. The vinyl post is 2 + Inch crosses the property line.

6. How draw facts from existing evidences:

Look at the photo in Record page 105, the hearing exhibit A[6].

A. The vinyl post is 4 Inch width. I said in the court.

B. Where is the property line? From cap of the iron post 2 Inch to the north (Vinyl fence side).

Prove 1: Record page 26, Exhibit H[2] at red point 3. We see the old chain fence post. The iron fence post is 2 Inch inside of my property line. Old chain fence exists for 40+ years.

Prove 2: Record page 22, Exhibit C[7] (FE 0'-2" So, it is on the top and close to 60 St). Here is 0 foot and 2 Inch south from property line. In this survey it also state where the property stamps (orange color) located "Cross cut in wall (Typical)"

Prove 3: Record page 23, Exhibit D[8] (0.15' S, on the bottom and close to 60 St). Here 0.15 feet = 1.8 Inch South from property line. There is 0.2 Inch measurement error is within reasonable measuring margin.

Prove 4: Record page 26, Exhibit I[9]. The orange first property stamp (nail with orange color tape) was made by Island wide land Surveyors it is about 2 Inch North from iron post.

Prove 5: Record page 27, Exhibit J[10]. The orange first property stamp (Cross) was made by Island wide land Surveyors again after Mr. Jamil removes it. It is about 2 Inch North from iron post. It also describe in the survey.

C. How much the vinyl post crossed the property line. It is about 2 3/8 Inch.

From this photo we can see the cap of iron fence is wide the iron post by ¼ Inch and the horizontal bar is narrower about 1/8 Inch.

D. The vinyl fence panel is cross the property line indeed. To get this conclusion we do not need 100% accurate. By common sense if more than 50% of the post cross the line the panel has to cross the property line. How much is not important for get this conclusion.

E. Look at this photo[6] . which show vinyl fence and iron fence contact to each other all way to the last iron fence post (Which is old chain fence post at Record page 26, Exhibit H[2] red point 2). What conclusion we can get. There is NO gap between vinyl fence and iron fence and they are in parallel.

In the Mr. Golden opposition to motion Exhibit C-2, survey "Albert A, Bianco" (In Record page 49[11]) is taken after vinyl fence is up. Look the vinyl fence line and the met-fence line. At bottom of it both line

meet together and at 60 street sides you can see they separated. This is a triangle. The property line is marked along the met-fence and the vinyl fence is inside of Mr. Jamil's property. In Mr. Jamil's opposition to motion 14 (In Record page 40[12]) also emphasis that.

Compare with what we see in this photo we can get the conclusion. Mr. Jamil's "Albert A, Bianco" survey (in Record page 49[11]) is fake documentation. It does not match the physical evidence.

7. Mr. Jamil provides court fake documents:

The court acknowledged that Mr. Jamil provides altered agreement to the court (Record page 20, Exhibit A[13] and Mr.Jamil's Exhibit A in Record page 44[14]). His purpose is trying misleading Judge we agree on the line at middle of the curb. The curb is not at middle of the property line. More than 2/3rd is in my side. Mr. Golden has NO objection and accepts that Mr. Jamil provides court an altered document.

We know Mr. Jamil's "Albert A, Bianco" survey (in Record page 49[11]) does not match the physical evidence. Here are more facts we can find from that fake survey.

Fact 2: Mr. Jamil do not claim any money paid to "Albert A, Bianco" survey. That is the only survey claim my house is 2.5 feet away from property line for meeting Mr. Jamil's request. Mr. Jamil paid $650 to "A&P Engineering and Land Surveying, P.C." and $1,500 legal fee. Ask total $2,150 pay. Think about it, during new construction the real property line is crystal clear before layout foundation. At Aug 21, 2007, the vinyl fence already up (show in the survey). The only need for this survey is claim 0.1 feet property from my side. How Mr. Jamil gets it?

Fact 3: Normally a survey will contains how far away from the owner's house to the property line.

If you check all other 5 surveys you can find they marked the property line is 2.6 feet away from my house. (One survey marked in 2 feet 7 ¼ Inch =

2.601 feet). But the only "Albert A, Bianco" survey NOT show how far away from owner Mr. Jamil's house from the property line. Instead marked my house is 2.5S away from the property line for meet Mr. Jamil's request. When I point out this fact at court, Mr. Golden make an objection saying in Transcript Record page 83, line 18[15]. He do not know what it is and "it has nothing to with the property line". At that time he is denying the property line is 2.5S from my house.

Fact 4: Normally a survey takes both end of street as landmark as base. By review other 5 surveys, you can see my property start at 175 feet from 38 Ave and end at 200 feet from 38 Ave. The "Alberto A, Bianco" survey did not take 38 Ave as landmark. It takes multiple steps go cross the street then back to east side of street. Here you need a little more knowledge to understand what happened. If "Alberto A, Bianco" uses 38 Ave as landmark to start with, then NO room for get 0.1 foot. For each measurement the MAX commonly may accept error is ¼ Inch = 0.25 Inch. As experienced surveyor can do much better (we do not see much error in all other 5 surveys). The ¼ Inch does not help Mr. Jamil he need 0.1 foot = 1.2 Inch which 5 times bigger than allowed error margin. So "Alberto A, Bianco" needs created multiple ¼ Inch error to get 0.1 foot from my property.

In case, he caught by authority he can say ¼ Inch is acceptable error. But he does not know the measurement error follows Poisson distribution rule. Base on probability theory, the error margin can go against Mr. Jamil's wish.

I know technically is impossible to make the property line 2.5 feet from my house. If his "Alberto A, Bianco" survey sent to court the court can take action to revoke the surveyor's license and not allow "Albert A, Bianco" to hurt other people. The "Alberto A, Bianco" survey may trigger criminal investigation to see how Mr. Jamil gets this.

8. The facts draw from Mr. Golden's objections:

When I point out the property line black mark made by "Albert A, Bianco" see Record page 28, Exhibit L [4] and Record page 106 Exhibit D[16].

The Mr. Golden said "I'm going to object to any presentation to what is the property line other than the survey..." on Record page 64, transcript line 22 -- page 65 line 5[17]. His objection also denies **the red property mark** made by "Albert A, Bianco" see Record page 27 Exhibit K[18] and page 28 Exhibit M[19]. Both are not in the survey.

His statement supports the **orange property stamp** made by Island wide land Surveyors. The **orange property stamp** is described in survey.

Recall Mr. Golden objects 2.5S in "Albert A, Bianco" survey is how far away property line from my house. Mr. Golden throws out all the "Albert A, Bianco" works. But his objection does not change the truth. Mr. Jamil provides court fake document. You do not need expert experience to know. All you need to do is compare the surveys. The "Albert A, Bianco" does not draw "art" on the ground and write "lottery number" on the survey.

9. The hearing:

I am not lawyer. I think if I prove Mr. Jamil cross the property line I win this case I have the right to protect my property. So I only ask to move the post out of the property line because if the post moved out the panel will go with it. I try simplified the case not let miner issue confuse the Judge. Under this condition when Judge asks me some thing else wrong with the fence my answer is NO. See from Record page 82 line 25 to page 83 line 4[20]. Limited by time and the ability of my English I only can do the most important thing to prove Mr. Jamil crosses the property line and he provides court fake documents. From the transcript I found the Judge and Mr. Golden has no objection on the property line is 2.6 feet away from my house.

There is NO argument I need to make in the hearing. Every thing is on the paper. I just guide the Judge to find the 2.6 feet number in the surveys.

Guide the Judge to see the fake survey where the triangle is and where is the gap. Guide the Judge to see the photo.

10. How draw logical conclusion from facts:

The 0.1 foot encroachment is very important for both side of owner it is not truly minimal and is not no negatively effect in property value.

Fact 1: If Mr. Jamil and "Alberto A, Bianco" provide court fake documents and take the risk in criminal charges and lost licenses then what they wanted is not something truly minimal.

Fact 2: Mr. Jamil spent $2,150 (the pay for "Alberto A, Bianco" not included). Compare with move vinyl fence cost (The vinyl fence post is $25 each if need replaced) and time (1 or 2 day work). Very clearly Mr. Jamil is not looking for truly minimal. In fact he paid even more, He rebuild the front part of driver way multiple times for remove the orange color property line stamp. Each time the property stamp put on he rebuild the front part of driveway. You can see them in Record page 26 -27 Exhibit I[9], J, K.

Fact 3: I paid Island wide land surveyors twice for property stamps and survey. I paid NY Land Surveyor PPLC for survey and bring Mr. Jamil to the court. Why I do that for truly minimal and no negatively effect in property value?

Fact 4: In my petition, I clearly state that I need rebuild my fence. Without remove vinyl fence post I cannot rebuild my fence.

Base on above facts, It is clear both side will not spend a lot of money and time for truly minimal encroachment. It also clearly indicates there are fundamental issues in this case.

11. Ten years occupancy law:

There is a law I do not know exactly name but the law said if a person occupies a land for 10 year he can declare he owns that land. That is the law I learned from news paper and confirmed by 2 attorneys. Mr. Stephan J. Siegel and Mr. George W. Klein, P.C. If I do not bring Mr. Jamil to the court, it

is possible I will lose that 0.1 foot land. This law recently changed with the condition the original owner needs to be informed. The court supposes to be able to help me get my land back. But fail to do so in lower court.

12. Survey and measurement:

All measurements have errors but the error will within reasonable range. The survey marginal error is ¼ Inch (from 2 of the surveyors I asked).Normally surveyor use both end of street landmark as standard point. 5 out of 6 surveys indicate my property south line at 175 feet away from 38 Ave. The north line is 200 feet from 38 Ave.

A survey should have a number indicate the house how far away the property line at least from owner's house.

In Woodside, the most property is 25 feet by 100 feet rectangle. 5 out of 6 surveys indicate my house is 2.6 feet away from the property line (one marked in 2 feet 7 ¼ Inch = 2.601 feet). There is no measurable error here.

13. The building zoning, code and how people buy the house:

The zone is an area indicted how real state property regulated. My property is in residential zone 5. The code is regulation for how house is build include the minion width required for walkway. Each house should have certification occupancy from building department. When I buy my property I order the survey (Record page 21, Exhibit B^{21} : survey is from building department) and the certification to verify any violations. My lawyer searches the court record also. The title company and the bank also do their search to see lawsuit and violations.

The property line be encroached will create great reduction of the property value. In most case people just walk away and do not want involved legal burden.

III. THE ARGUMENTS

14. The conclusion "The fence does not extend into the petitioner's property at all" is incorrect base on the legal definition of fence and the evidence.

First, the fence post is part of the fence. Without post the fence panel will fall down. The fence post cross the property line is the fence cross the property line. For you easy understand, when we say the horse it include the house leg also.

Second, the fence penal also crosses the property line. The fence run like "K" at both end of fence penal also crosses the property line. See above point 5 and 6.

15. The conclusion "The encroachment of the post is truly minimal" is base less.

Big or small is relative concept. We need base point to compare. With out comparison or quantify number, the conclusion is base less. For my 2 Inch chain fence it is 100% lost. The 1 ¼ – 2+ Inch is not truly minimal for my 31 ¼ Inch (2.6 feet) wide sidewalk. Compare with 25 feet normal property width the 24.9 feet is not truly minimal.

16. The statement "Indeed, plaintiff has not alleged or demonstrated on the record before us that these slight variations negatively affect its property value in any measure" is ignoring the evidences in the motion and illogical statement:

The court already acknowledged the center of the fight is 0.1 foot or more. If any one thinks 24.9 feet property and with neighbor encroachment will have same value as 25 feet property then it like point to black color and say it is white color.

Ask your self would you and the most of buyers buy encroached property? When a property line was encroached it greatly reduced the property value. NO one wants deal with unnecessary legal burden.

My chain fence took down and no way to restore at original position and my 31 ¼ Inch wide sidewalk lost 1 ¼ - 2+ Inch are negative impacts. It is hard for me deal with 6 feet high hard plastic fence (hit and

break) than 3 feet high chain fence (hit bounce back.). In the motion I clear state Mr. Jamil's motivation. He wants to declare the minimal encroachment become his property and take down my front iron fence in the future.

17. Compare residential real state property with business real state property like compare apply with orange:

Residential and business are different concept. The building zoning /code / size/ owner/ value are different. I have no comment on why in the ruling example plaintiff accept the ruling. But it is not the case for residential in Woodside. The most people only have 25 feet wide to build as big as possible house. Lose 0.1 foot cannot be ignored.

Additional, allow new construction encroach to neighbor is not lawful.

18. How hard to remove a vinyl fence:

A fence is light structure and easily built. The vinyl fence panel is screw mounted. The panel can be install/uninstall within few minutes. The only real needs are move the post. The cost of the post is $25 each at Home Depot. Mr. Jamil paid $2,150 is way over the move post cost.

19. The law and how property line defined:

Again I do not know the name of the law but I know it is exist. Who use the land more than 10 years who can declare is the owner. My fence exists for more than 40 years. The photo is valid evidence in the court. My property can restored 100% accuracy base on the photo.

5 surveys indicate I have 2.6 feet sidewalk so my property should 100% accurate restored.

Here is what my understanding how it works. In most case, my old chain fence is stand on 2.6 feet line. But technically ¼ Inch error allowed. In the case the surveyor measures ¼ Inch into my old chain fence post. Normally surveyor needs respect existing landmark. He will not ask for cut ¼ Inch of my post. If any one insist want cut that ¼ Inch from my 2

Inch post, the 10 years occupy law protect that from happening.

20. What is wrong in lower court?

When Mr. Jamil want take down front part of my old chain fence. See Record page 26 Exhibit H[2] red point 3. I call police to stop him. The police told me it is civil issue need go to court.

I writ to building department point out they are responsible for support their survey see Record page 21 Exhibit B[1]. They suggest hire lawyer bring Mr. Jamil to the court. They do not have resource.

After discuss with lawyers I think I can do it by myself. I know personal property is protected by law. I am an engineer and know how to prove Mr. Jamil cross the property line base on 4 of surveys I have. If Mr. Jamil provides court fake survey I will have better way to prove it.

Occupy my property against my wish is like robbery. It is invasion. If court cannot protect me then it is a problem.

The ruling from lower court directly support Mr. Jamil' fence occupy my property and support the person provide court fake documents. The ruling is incorrect in any sense.

A. If encroachment allowed then open the door for endless construction and encroachment because both side can do same thing take down the fence and rebuild new fence the total cost only about $1,000 - $2,500 for rebuild new fence or even less if just move over the existing fence post.

B. Due to the property is in plaintiff side. The plaintiff can just cut the encroached fence along the property line. It is constitutional right to protect personal property. In fact, Mr. Jamil told me that I can cut down his fence if he crosses the property line.

C. Steal one cent from billionaire still is criminal. Encroachment still is encroachment. Court suppose ruling on truth and give justice.

III. THE CONCLUSION

21. Conclusion:

The personal property is protected by law. I ask court for protection. I have right to get protection. All new construction should absolutely respect to the property line. NO encroachment allowed.

Mr. Jamil provides court two faked documents

This encroachment is not only greatly reduced my property market value it also greatly reduced it usage value. I may lose my Certify of Occupancy from building department due to do not meet safety minim walkway width code.

Three of the orange property stamps still on the ground. The front one can restored by adding 2 Inch north to the top of my iron fence.

It is not a big job to move vinyl fence post back. Mr. Jamil is intentional cross the property line. He is responsible for all the cost.

All my expense should reimbursed, I ask total $6,000 now need include the appeal process cost.

A 30 minutes field visit will make every thing crystal clear. 10 minuets remove the fence panel and use tape ruler you can find both house 7.9 + 2.6 = 10.5 feet apart.

S/ Zhuang Li Cai

Refference mapping:

[1] Record page 21, Exhibit B -> -49-, Exhibit B

[2] Record page 26, Exhibit H -> -59-, Exhibit H

[3] Transcript in Record page 67 line 14 to page 68 line 19.-> -109-, line 30 to line 34

[4] Record page 28 Exhibit L -> -63-

[5] Record page 29 Exhibit N -> -65-

[6] Record page 105, the hearing exhibit A -> -133-

[7] Record page 22, Exhibit C -> -51-,-52-

[8] Record page 23, Exhibit D -> -53-,-54-

[9] Record page 26, Exhibit I -> -60-

[10] Record page 27, Exhibit J -> -61-
[11] Record page 49 -> -72-, -73-,-74-,-75-
[12] In Record page 40 -> -67- item 11, -68-,item 13,14
[13] Record page 20, Exhibit A -> -48- Exhibit A
[14] Mr.Jamil's Exhibit A in Record page 44 -> -70-, Exhibit A
[15] Record page 83, line 18 -> -120-, line 10
[16] Record page 106 Exhibit D > -134- Exhibit B (original is error)
[17] Record page 64, transcript line 22 – page 65 line 5-> -107- line 8 to – line 16
[18] Record page 27 Exhibit K -> -62- Exhibit K
[19] page 28 Exhibit M -> -64- Exhibit M
[20] Record page 82 line 25 to page 83 line 4 ->-119- line 28 to 32
[21] Record page 21, Exhibit B -> -49-, Exhibit B

Respondent BRIEF

New York Supreme Court
Appellate Division - Second Department
Docket No.: 2008-4456
Queens County Clerk's Index No.: 27891/2007

Zhuang Li Cai Petitioner
- against -
MD. Jamil Uddin Respondent

RICHARD N. GOLDEN, P.C.
Attorney for Respondent

Counter Statement of Questions

1.) Q. Has appellant provided evidence that property value has been affected. Answer: No

2.) Q. Has appellant provided evidence that the Certificate of Occupancy will be affected? Answer: No

3.) Q. Is the encroachment of the fence posts di minimis? Answer: Yes

STATEMENT OF FACTS

Appellant commenced an action to compel Respondent to remove fence posts and pay Five Thousand Dollars ($5,000) for "processing expenses and rebuild... fence" (Record on Appeal, page "17"[1]).

On January 31, 2008, the Honorable Charles J. Mackey conducted a hearing on this matter.

At the Hearing, the Court reviewed three (3) Surveys made after a vinyl fence was erected between the property of Appellant and Respondent:

1.) Survey dated July 9, 2007 (Record on Appeal, page "23"[2]).

2.) Survey dated August 21, 2007 (Record on Appeal, pages "48" - "49"[3]).

3.) Survey dated October 3, 2007 (Record on Appeal, pages "51" - "52"[4]).

The property to the south of the fence is owned by Appellant and the property to the north of the fence is owned by Respondent (see page "76" of the Record on Appeal[5]).

Mr.Cai admits the fence constructed by Respondent is north of the property line (see page "93" of Record on Appeal, lines "10" - "16"[6]). It is only two (2) or three (3) fence posts that allegedly straddle the property line.

The Court clarified the dispute in the following exchange with Appellant
(see Record on Appeal, page "93"[7]):

The Court: And so I still don't see what the problem is. Looks like the fence is laying on the property line.
Mr.Cai: Yes
The Court: At the edge of it.
Mr.Cai: Yes. My Motion is to remove the post. I didn't say his fence.
The Court: Are you saying the fence is on the north of the property line, but the post impinge on your property?
Mr.Cai: Two Inch
The Court: It's the post. So you want the post moved back two inches. Okay. Post. So wherever there is a post, that little bit of land is being taken from you.
Mr.Cai: I tell you why. The post is orange square.
(Record on Appeal page "93", lines "3" - "17"[8])

After Trial, the Honorable Charles J. Markey wrote a Decision and Order dated March 18, 2008. Based upon the testimony of Mr.Cai and review of the three (3) Surveys depicting the new vinyl fence between Appellant's and Respondent's property. Judge Markey concluded: "the fence does not extend into the Petitioner's property at all and that only the

posts to the fence extend beyond the line and that the encroachment of the posts is truly minimal". The Court also noted in the Decision that "Plaintiff has not alleged or demonstrated on the record before us that these slight variations negatively affected its property value in any measure". Citing Wing Ming Properties (USA) Ltd. v. Mott Operating Corp. 79 NY2d 1021, 1023 the Honorable Charles J. Markey concluded that the encroachment neither justified injunctive relief nor monetary damages.

I

VALUE OF PROPERTY

Mr.Cai alleges in his Preliminary Statement that the aforementioned encroachment "will greatly reduce the sale position for my property". However, Mr.Cai offered no evidence to support this allegation at Trial and has not offered any new evidence on appeal to support this argument.

II

"CERTIFICATE OF OCCUPANCY"

Arguments made by Mr. Cai about "possible lost certified occupancy" (see pages "1" and "8" of Brief[9]) are confusing, misleading and speculative. No issue was raised at Trial that the encroachment of a fence post by 0.1 feet would result in the "possible lost certified occupancy". No statute or case law has been offered by Appellant to support the argument that the Certificate of Occupancy of the premises would be altered by an encroachment of a two (2) inch portion of one or more posts onto Appellant's property.

III

DI MINIMIS ENCROACHMENT

Mr. Cai claims that the fence posts encroach onto his property by about two (2) inches. In fact, the Survey dated July 20, 2007 shows portions of the fence, one (1) inch to two (2) inches south of the property line onto Appellant's property and at other

points, one (1) inch to three (3) inches north of the property line onto Respondent's property (see Record on Appeal, page "22"[10]). However, the Survey dated October 3, 2007 shows no encroachment (see Record on Appeal, pages "51" and "52"[11]). The Survey dated August 21, 2007, shows that the vinyl fence is either on the property line or just to the north of the property line onto Respondent's property (pages "48" and "49"[12]). The three (3) Surveys taken after the vinyl fence was erected confirm that, at best, there was a one (1) to two (2) inch encroachment at two (2) points along the property line.

The First Department in Wing Ming Properties (U.S.A.) Ltd. v. Mott Operating Corp. 172 AD2d 301 (Affirmed, 79 NY2d 1021) found that the alleged encroachment could not affect the ability of Plaintiff to maintain its structure. The Appellate Division and Court of Appeals took an equitable approach to the alleged encroachment weighing on one side the detriment to the Defendants if they had to remove the encroachment and weighing on the other side of the scale of justice the benefit to the Plaintiff.

Both the Appellate Division and the Court of Appeals held that the encroachment was de minimis and although the encroachment did not significantly affect the Appellant, the removal of the encroachment would be a significant detriment to the Respondent.

The Appellate Division 2nd Department has adopted the same equitable approach measuring the encroachment and weighing the hardship to the Defendant in removing the encroachment against the lack of benefit to the Plaintiff. See Generalow v. Steinberger 131A.D.2d 634 (2d Dept. 1987). See also Medvin v. Grauer 46A.D.2d 912 (2d Dept. 1974).

CONCLUSION

The two (2) inch encroachment of a fence post onto Appellant's property is truly di minimis.

Appellant failed to provide any evidence that the two (2) inch encroachment of a post would affect the value of the property nor would it affect the Certificate of Occupancy.

By reason of the foregoing, the Decision of Judge Markey should be sustained.

Dated: Forest Hills, New York, November 10 2008
S/ RICHARD N. GOLDEN, P.C.
Attorney for Respondent

Reference mapping:

[1] Record on Appeal, page "17" ->-45-

[2] Record on Appeal, page "23" ->-53- ,-54-

[3] Record on Appeal, pages "48" - "49"->-72- to -75-

[4] Record on Appeal, pages "51" - "52" -> -76- to -78-

[5] see page "76" of the Record on Appeal -> -114- last 4th line to -115- line 20

[6] page "93" of Record on Appeal, lines "10" - "16" ->-127-, line 1 to line 8.

[7] Record on Appeal, page "93", ->-126- line 22 to -127- line 12

[8] Record on Appeal page "93", lines "3" - "17" -> -126- line 24 to -127- line 3

[9] pages "1" and "8" of Brief ->-79- to -80- line 2 and -84- line 5 to line 37

[10] Record on Appeal, page "22" -> -51- to -52- Exhibit C

[11] Record on Appeal, pages "51" and "52" -> -76- to -78-

[12] pages "48" and "49" -> -72- to -75- Exhibit C.

Petitioner Reply Brief

New York Supreme Court Appellate Division – Second Department Docket # 2008-4456

Zhuang LI Cai Petitioner

— against —

MD. Jamil Uddin Respondent,

I. ANSWER Counter Statement of Questions.

1.) Q. Has appellant provided evidence that property value has been affected?

Answer: Yes, the Property line encroached by 2+ Inch. The total property width is reduced from 25 feet to 24.8 feet.

2.) Q. Has appellant provided evidence that the Certificate of Occupancy will be affected?

Answer: The minim safety requirement for the walkway is 32Inch. My walkway is 31.2 Inch. The encroachment is 2+ Inch. Now the walk way is 29.2-Inch and far less than 32 Inch and not meet safety requirements. It is building department right to make any decision on it.

3.) Q. Is the encroachment of the fence posts di minimis?

Answer: No. 2 Inch encroachment takes away my fence completely. My 31.2Inch walkway reduce to 29.2 Inch is not di minimis.

II. Argument with reply Statement of Facts

On reply brief page 1 line 6 – 13[1] only list 3 Surveys. But the key issue is **where the property line is.** There are five Surveys present to court. 4 of them clear indicate the property line is 2.6 feet away from my house north. **Judge and Mr. Golden already agree 2.6 feet is the correct number.**

For reply brief page 1 line 16[2], the reason for me saying the fence on north side is try to reduce the

complexity of question and put focus on the post encroachment. The post move out the fence panel will go with the post.

For reply brief page 1 line 17-18[3]. I did not say only 2 or 3 fence posts cross the property line. **That is Mr. Golden made up.** Mr. Golden made up thing does not exist in the record and even without think it is physically possible or not.

Look at record page 26 exhibits H[4] and record page 105 Exhibit A[5]. The posts are look like in perfect line. Recall the brief page 4 line 1[6]. I said the vinyl fence runs like "K" at front and back end they cross the property line by 2+Inch. Look at record page 28 Exhibit M[7]. You can see at middle section the fence panel barely along the orange property marker. So the post has to be cross the property line. In fact all post cross the property line. At middle section, they cross the property line by 1.2+ Inch. Think the fence is nearly 100 feet long that is why in record page 26 Exhibit H[4] you cannot see the curve (0.8 Inch difference).

Now we look Mr. Golden said it is just 2 or 3 posts cross the property line by 2 Inch. The posts are 6 feet in between. In a line of posts not cross the property line those 2 or 3 post shift position by 2 Inch we will not see something like record page 26 exhibits H[4] and record page 105 Exhibit A[5]. **The posts are simply can not line up.** You will see those 2 - 3 posts out of the line. It is 50% of the post width.

1. VALUE OF PROPERTY:

Property line encroached by 2 +Inch is an evidence for property value reduced. What other evidence needed? You cannot compare two different houses, too many different facts. You cannot compare same house at different time, the market changed. We even cannot give the exactly amount that is different from buyer to buyer. We cannot put the house in the market to see the reduction, because it is not realistic ask buyer if this house not encroached what you like to pay. The only correct way is comparing

same house with and without property line be encroached. One thing for sure, the buyer will use property line encroached as a reason of price reduction. I like ask Mr. Golden. Does he like to use the encroachment for reduce house price he wants to buy? Here we need use logical thinking and common sense. We need agree what the majority buyer will do in this situation. Additional the usage value also a part of property value I already explain in my brief.

2. CERTIFICATE OF OCCUPANCY:

The lower court shows leak of knowledge how residential property is build. How hard people try maximizing the usage of the land. The minimum 32 Inch walkway is I leaned from contractor, civil engineer and building department web site. I just raise attention for court to check with building department to see what safety code involved. I try letting court understand how residential property land is used. Compare residential property with business property land is comparing orange and apple. I say, "may" because I am not building department.

My walkway is 31.2 Inch which 2.3% in short from minimum safety code but still get Certify of Occupancy.

Mr. Jamil Uddin driveway is 7.9 feet, which is 1.93% in short from minimum safety code. Which is less than my walkway so building department may still give him permission if no other problems.

If I lost 2+ Inch, it will be 8.75% short than minimum safety code. This 2 Inch is more important for me than for Mr. Jamil Uddin.

3. DI MINIMIS ENCROACHMENT:

The property line is 2.6 feet already confirmed. The Judge and Mr. Golden agreed. The orange color property markers also clearly indicated in the Survey. Mr. Golden has NO objection on his reply.

Any attempt change focus is just waste time. I just ask all post should move out of the orange color property markers.

The court order will as simple as move every thing out of 2.6 property line, which is stamped in orange color. If Mr. Golden thinks only 2 - 3 posts cross the property line that is not big job. It is just few hours' work. The court marshal, Mr. Golden and me work together to find out how many post need move. We do not need argue how many posts and how much cross the property line.

The benefits for me are

a.My house will better fit building department safety code.

b.I will in good sale position when I want sale my house.

c.I never worry about property take by Mr. Jamil Uddin after 10 years.

d.I can have 31.2 Inch wide walkway. That is nearly 6.5% wider.

e.I can build iron fence for protect me break the vinyl fence.

f. I do not need go higher court for protect my personal property.

The hardship for defendant does not exist.

I already explained how easy to move the fence. Mr. Golden has no objection on it. **<u>If Mr. Jamil Uddin proves to the court his hardship</u> then I can hire the contractor and pay the full cost of remove the encroachment at front.** Mr. Jamil Uddin can pay back monthly amount of 0.1% of his annual income or any amount he can work with but not less than $50 a month until the balance to zero.

The total move post cost about $375 in new post and $400 in 2 men 2 days labor. We can double that amount $1,500 will be enough.

III. The questions:

1. A homeless rob a man for $1. When they go to court, the homeless said he is in hardship and it is the di minimis lost for the man. Do you think the homeless have the right to keep that $1 or the man has the right to get $1 back?

My answer is the man has the right to get back $1. The homeless need go to jail.

2. Mr. Golden in his reply of brief did not objecting the fact. Mr. Jamil Uddin is intentional cross the property line. Do I need give him my property to meet his bad decision and demand? Do I need spend money to protect my property?

My answer is I do not responsible for Mr. Jamil's mistake. Mr. Jamil Uddin should bear with all the cost. He should pay $6,000 for my expense now.

3. Compare Mr. Jmail Uddin take 2 Inch from my property only garn 2% in driveway width. But I lost 6.5% in walkway width. Which side is the truly di minimis?

Everyone knows this math.

IV. The conclusion:

Where the property line is is clear without any objection. The di minimis ruling example does not apply to this case. I do believe the court ruling should not encourage the intentional encroachment, especially for the new construction. The ruling should not open the door for someone intentionally cross the property line. All personal property should protect by law without any hardship challenge.

S/ Zhuang Li Cai 12/9/2008

Reference mapping:

[1] reply brief page 1 line 6 – 13->-93- line 33 to -94- line 2

[2] reply brief page 1 line 16 -> -94- line 7-8

[3] reply brief page 1 line 17- 18,->-94- line 9-11

[4] record page 26 exhibits H ->-59- Exhibit H
[5] record page 105 Exhibit A ->-133- Exhibit A
[6] the brief page 4 line 1 -> -81- line 17-18
[7] record page 28 Exhibit M -> -64- Exhibit M

Court room Transcript & Exhibits

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART TT32

ZHANG LI CAI Plaintiff
-- against -- INDEX NO. 27891-07
JAMIL UDDIN, M.D. Defendant.

Supreme Courthouse
25-10 Court Square
Long Island City, New York 11101
January 31, 2008
BEFORE: HONORABLE CHARLES J. MARKEY
JUSTICE
APPEARANCES: ROBERT GOLDEN, ESQ.
Attorney for Defendant
TAJUANA WILSON, RPR Senior Court Reporter

THE CLERK: Part TT32 now in session. Honorable Charles J. Markey presiding. Index No. 27891-07, Zhang LiCai, plaintiff, versus Jamil Uddin, M.D., defendant.

THE COURT: I looked over the papers. MR.Cai, you're complaining that MR.Uddin -- oh, we need the appearance of both parties.

MR.GOLDEN: Richard Golden for the respondent -- defendant Mohammed Jamil Uddin, 118-35 Queens Boulevard.

THE COURT: Charles, would you swear in MR.Cai.

THE CLERK: State your name for the record.

THE WITNESS: Z-H-U-A-N-G, L-I, C-A-I.

THE CLERK: Please raise your right hand. Z H A N G L I C A I, called as a witness by the Plaintiff, having been first duly sworn by the Clerk of Court, was examined and testified as follows.

THE CLERK: Thank you. Please be seated.

THE COURT: This is a hearing on order to show cause or rather notice of petition by MR.CAI, and it concerns a fence line separating his property at 37-43 60th Street in Woodside from the next door resident, which is, I believe, 37-41 60th Street, which is MR.Uddin's property. And you're asking for removal of all fence posts from my property and for the defendant to pay $5,000 for expenses and to rebuild my fence. Okay.

What I've read in the papers, apparently, you had a chain link fence between your property and the property to your north, correct -- I'm sorry, to your south?

MR.CAI: It was taken down right now.

THE COURT: Now did you agree with MR.Uddin to have that fence removed?

MR.CAI: Yes. At the beginning he told me -- he say we only need one fence and that I will build iron fence and we'll only need one. I agree. And at that point I told him if he want 100 percent ownership for the fence he need to build up a fence 100 percent inside of his property not in the middle of the lot and he agreed. He say he will build high fence inside of his property. That is common almost so I almost agree.

THE COURT: Okay. This happened over a year ago, I think, the fence. The old chain link fence was removed and then the new vinyl fence was put up, what, July 2007, I believe?

MR.CAI: Which one?

THE COURT: The new vinyl fence. Is it vinyl fence that went --

MR.CAI: Yes. He set up what date I can't recall exactly, but right now his vinyl fence is up and his post is up first and then put the fence up.

THE COURT: Okay. It's complete. The whole fence is up.

MR.CAI: Yes.

THE COURT: All right. And you're saying that he put it over onto your property line -- on your

property line, so that it's crossed over 2 inches or more onto your side of the division line; is that correct?

MR.CAI: That's correct. I give you more detail about his fence with my property line. My property line is supposed to go straight line, his fence runs like a K this way, on both end. His cross line like two inch across and the K, the angle, this one, is cross one inch, little more than one inch. I show the photo here.

THE COURT: Is it in your papers, the photo you're holding, or is that a picture that's not in here?

MR.CAI: The picture I have, you have that picture in my motion, but another -- another one, you know, may not be like this one show exactly how much it cross at K angle.

THE COURT: All right. I'm looking at it. Did you see it?

MR.GOLDEN: No.

MR.CAI: You could have one.

THE COURT: Let MR.Golden see it please.

MR.GOLDEN: Your Honor, there appears to be three photographs. I'm not sure what each of those photographs are. MR.Cai, if I may ask you, on the far left handcorner, is this the old fence?

MR.CAI: Yes.

THE COURT: Was that removed?

MR.CAI: Yes.

MR.GOLDEN: That's no longer there?

MR.CAI: Yes. Yes.

MR.GOLDEN: Middle picture with this tubing, what is that?

MR.CAI: That is still there.

MR.GOLDEN: That?

MR.CAI: Any old fence post later in the front you will see iron fence sauntering on the middle. That fence post still stay, my fence. The right.

THE COURT: You're talking about middle photo?

MR.CAI: Yes.

THE COURT: It's what kind of fence? Old fence?

MR.GOLDEN: Is this the supporting base that's used to be holding up the chain link fence?

MR.CAI: Yes. The angle of the chain fence. I have two sections fence. On the -- and like 50 years old. And iron fence, I don't know when they build is at front section and then two section.

MR.GOLDEN: What is this photo on the right?

MR.CAI: The picture is bottom of that post. You can see the fence and black mark.

THE COURT: Black mark.

MR.CAI: It's black mark they say -- they say Jamil say that he posted property lot.

MR.GOLDEN: Your Honor, I'm going to object to any representation to what is the property line other than the survey that we have offered to the Court.

THE COURT: We have battling surveys.

MR.GOLDEN: Other than -- I have no objection. The photographs on the left is not a representation of what the fence is now. So I would object to that. I don't believe any of these photographs have merit to this particular claim.

THE COURT: I'll have a look and see. Let me see What it is. One on the left?

MR.GOLDFN: That was the old fence.

THE COURT: That's your house in the picture?

MR.CAI: Yes.

THE COURT: All right. And that's looking out towards the street or towards the back of your --

MR.CAI: Cross street.

MR.GOLDEN: Is that facing --

THE COURT: Actually, it's looking toward the back of your property.

MR.CAI: No, looking to the street.

THE COURT: That's the street. Okay.

MR.CAI: Cross street.

THE COURT: The house in the back, is the house across the street?

MR.CAI: The photo in the back of my house looking forward.
THE COURT: I see this chain link fence. It does look --
MR.CAI: But it look good.
THE COURT: -- didn't look like it was in good shape.
MR.CAI: Yes. Fifty years old.
MR.GOLDEN: And middle post is still there?
THE COURT: The middle photo.
MR.CAI: Middle photo.
THE COURT: That was support post for the old --
MR.CAI: Yes.
THE COURT: -- fence?
MR.CAI: Yes.
THE COURT: Where was it located on property line?
MR.CAI: The gate on the left side of the photo has a gate and the post is this way.
THE COURT: The third picture shows it's next to gate post. Vinyl gate post.
MR.CAI: Okay. My point is middle photo you examine, see his post across my post already?
MR.GOLDEN: Your Honor, I'm going to object. I'm going to object to this line of testimony because it has
nothing to do with the actual survey. It is only a photograph.
THE COURT: I just want to hear his side.
MR.GOLDEN: All right.
THE COURT: The old fence.
MR.CAI: Yes.
THE COURT: As far as you know, was it located on the property line on your side or the other side which --
MR.CAI: On my side. Survey I have -- I submit with the motion.
THE COURT: Which survey is that? Which of your surveys?

MR.GOLDEN: I believe that's Exhibit B.

MR.CAI: Exhibit B.

MR.GOLDEN: B. Survey from 1963.

MR.CAI: B and not D. B and E. That is the whole 40 years old. One is what 20 years old. They have date on that when --

THE COURT: Okay. There is in your papers a survey done in 1963, right?

MR.CAI: One is 1963 and another is --

THE COURT: I don't have a degree in civil engineering, so I see -- I see straight lines. It is very interesting, but I'm not too sure.

MR.GOLDEN: Your Honor, it appears that my client's property is to the north at the top of the page.

THE COURT: That was the older house that was knocked down, is that right, or is it the same house that's there now?

MR.GOLDEN: They're not showing my client's property to the north. They're just showing the plaintiff's property to the south.

THE COURT: Right.

MR.GOLDEN: But if you notice the fence is south of the property line. That is that the fence was the original fence. The chain link fence was erected on the plaintiff's property south of my client's property line.

THE COURT: That's the dotted line?

MR.GOLDEN: Yes.

THE COURT: Dashes. A dashed line.

MR.CAI: That's right. The chain link fence inside of my property.

THE COURT: Okay. I see it.

MR.GOLDEN: So we're in agreement.

THE COURT: MR.Golden agrees with you.

MR.GOLDEN: We're in agreement that that fence was within the plaintiff's property line.

MR.CAI: The post.

THE COURT: Then we go to the next survey, Exhibit C, but we're surveilling July 20, 2007. Now was this at the time the old fence was up or afterwards?

MR.CAI: Older fence is down already.

THE COURT: Okay.

MR.CAI: Older fence is down already and my iron fence still stands from the part -- iron fence still stands. And since, you know, I'm engineer, I explain what key number when you're looking to the key number is 2.6 feet. The property line is 2.6 feet away from my house.

MR.GOLDEN: Your Honor, I don't see 2.6. I see 2.7 feet.

THE COURT: On this survey I see it. It says 2.7 and one quarter. Two feet seven and one quarter inches.

MR.GOLDEN: That's what.

MR.CAI: If you translate the decimal, it will be 2.601 something.

MR.GOLDEN: We're talking about feet and inches. That's what the survey indicates. Your Honor, just for clarification, MR.Uddin's property, the defendant's property, is to the right or to the north.

THE COURT: I see.

MR.GOLDEN: Okay. Now, your Honor, I also like to point out this survey seems to be somewhat ambiguous. If you look at the top near 60th Street, it says F-E, which I

believe is fence. One inch plus or minus N-O. I think that means to the north.

THE COURT: North, I think.

MR.GOLDEN: Below that it is 2 inches plus or minus to the south. Now that means that -- first of all, I don't know how much of a variance there is between plus and minus, but one part of that fence is on my client's – over onto my client's property and the other may or may not be over onto the petition's property. The survey isn't precise. It says plus or minus and it's not sure.

The next item down where it says 1 inch to the south plus or minus and then the wall is 3 inches to the north which is again onto my client's property. And, finally, at the bottom it says fence on the line and in the wall one inch plus or minus to the north.

So we have several of these sections that are actually to the north on my client's property, and it appears that only the fence is at the front of the property, may or may not be. It says 2 inches plus or minus and one inch plus or minus below that. But because it's not precise, I think the Court needs to look at the two subsequent surveys that my client has provided.

My client provided one survey that shows that the fence is truly on his side of the property and that's Exhibit C. Your Honor, I have cut it in half just for purposes of fitting it on the exhibit, but I do have full survey if you like to see it.

THE COURT: Did you see copy of this?

MR.CAI: Yes. I explain more clearly.

THE COURT: Now, is this done about the same time as the one in MR.Cai's paper?

MR.GOLDEN: The survey that I'm showing.

THE COURT: This is done a month later?

MR.GOLDEN: August 21.

THE COURT: One month later. In both surveys the concrete wall and vinyl fence were already --

MR.CAI: Yes.

THE COURT: -- finished, correct?

MR.GOLDEN: Correct.

THE COURT: Now looking at the same thing.

MR.GOLDEN: On this particular property survey, MR.Cai's property is to the left and MR.Uddin's property is to the right, and if you notice the vinyl fence is to the right of the property line.

MR.CAI: Okay. Judge.

THE COURT: Okay. Hold on a second.

MR.GOLDEN: It doesn't say plus or minus. It clearly shows that the vinyl fence is to the north of the property line on my client's property.

THE COURT: The vinyl fence being represented by a narrow line with dots.

MR.GOLDEN: That's correct. Now, your Honor, in Exhibit D, we had a subsequent survey done on October 3, 2007, and I have full survey here for you. I've added a yellow sheet just to mark the plaintiff's and defendant's property. I've already shown that to MR.Cai. If you notice on this particular survey taken in October of '07, it clearly indicates, without equivocation1 that the vinyl fence is on the property line. And it says on the property lines. Now if you notice there is a driveway here.

THE COURT: I'm trying to find that way. I see vinyl fence. Now on the previous one there's mention of metal fence.

MR.GOLDEN: Where do you see metal?

THE COURT: On the one done in August, and I think also -- yes, one done in July. It says metal fence from the sidewalk.

MR.GOLDEN: I'm looking at vinyl fence. Are you looking --

THE COURT: No. No. The one done -- oh, I see. Wait. Wait. The one done in July by MR.Cai --

MR.GOLDEN: July 20, 2007.

THE COURT: -- shows metal fence, PBC fence post -- oh, yes. In the back it shows metal fence, but along the side It shows PBC. I know. Is there a metal fence there?

MR.GOLDEN: Not anymore.

THE COURT: MR.Cai, why does that say metal fence?

MR.CAI: I want to give you clear crystal clear explanation of the survey number means, because since I'm engineer, I know which key number you looking for. The key number is in front of my house and my property line is 2.6 feet.

THE COURT: I got that point already.

MR.CAI: And this cross all surveys, including the survey provided by Jamil, except it's either C or D, it's A and P, that the company made survey. You see 2.6 feet away from my house the property line. That the key number we are talking about here. Since there are five surveys supporting that number 2.6 feet away from my house.

MR.GOLDEN: I don't see that.

MR.CAI: You don't see it?

THE COURT: Which survey do we see that on?

MR.CAI: Everybody see that number 2.6?

MR.GOLDEN: No.

MR.CAI: I show you Exhibit B first, my motion. Take Exhibit B. You find 2.6 in the front of the house and property line.

MR.GOLDEN: This is the old.

MR.CAI: Yes. Take a look. Do you see 2.60?

MR.GOLDEN: No.

MR.CAI: No. I show you.

MR.GOLDEN: That's 260.

MR.CAI: 2.601 feet. This is key number. The key number is how far property line, how far away from my house. If you -- we accept that 2.6 number, that number is consistently crossed all five surveys. And take look at C, my Exhibit C, motion C. Here it says 2 feet 7-inch and a quarter. Seven-inch and a quarter equal 2.601. So his 2.601 feet so basically still stand 2.6 feet away from my house. Then take a look at Exhibit E, my motion. It also say that 2.60 south. My motion Exhibit E either says 2.6. That is key number.

THE COURT: Got it. So you're saying how far is he on your side.

MR.CAI: Yes.

THE COURT: How far are you saying that your proof shows? That it is over 2 inches?

MR.CAI: Yes.

THE COURT: That's the number you seem to use.

MR.CAI: I told you the number. In his survey he has two surveys. One survey marked 2.60 feet in the A and P company. And I have no argument about that. It's good. That is all I want, 2.5 feet. So right now we have five surveys match each other to property line is 2.6 feet away from my house. End of story. The only problem in the another survey, he claim that the number is hard to read, but I point to you it's in Exhibit C in his response. Exhibit C is 2.5 feet away from my house. That the only odd survey here. You get 2.5.

THE COURT: Yes. I see it. 2.5.

MR.CAI: S.

THE COURT: Apostrophe S.

MR.GOLDEN: Where is that?

THE COURT: On the survey done on August 21. I don't know if that's from the property line or from the fence. assume from the property line.

MR.GOLDEN: A and P.

THE COURT: Albert Bianco.

MR.GOLDEN: 2.5, where is that?

THE COURT: Written below the line delineating his house. 2.5 apostrophe S for south. I believe.

MR.CAI: Judge, all I know is 2.6.

MR.GOLDEN: That's not where you're looking at. 2.5, that's not the property line. We're looking at vinyl fence and that line, that thicker line next to the vinyl fence is property line. That 2.5 is pointing to the -- looks like to the structure of the house.

MR.CAI: Property line to the house.

THE COURT: Well, I couldn't swear either way to what it refers to. I see it though. I see what it says 2.5 apostrophe S and the other 2.6.

MR.CAI: We have one says 2.6.

MR.GOLDEN: Wait a second.

THE COURT: We're just saying it equates to the 2 feet 7 and one quarter inch; is that correct?

MR.GOLDEN: Your Honor, I'm not sure what that 2.5 represents, but I do know that there are two separate lines showing vinyl fence and property line.

THE COURT: It shows the vinyl fence north --

MR.GOLDEN: And the vinyl fence --

THE COURT: -- north of the property line.

MR.GOLDEN: Vinyl fence is north side, which is on My client's side of the property. Is that clear?

THE COURT: What -- that's what it looks like.

MR.CAI: Judge, that survey has been a problem. I would point out to you later. I want to point out in this photo, my aging post here is 2.6. If not accept 2.6, my fence was taken down here is .5 -- 6. If you accept 2.5, my fence was cut. Iron fence was cut.

THE COURT: Did you understand that?

MR.GOLDEN: No.

THE COURT: I'm not sure what you're saying. I see the old post and you're saying what, it's 2.6?

MR.CAI: 2.6 here. If you accept the 2.6 this post will stand.

THE COURT: You're saying that the vinyl post is onto your side?

MR.CAI: Yes.

THE COURT: The old post was completely on your side.

MR.CAI: Yes.

THE COURT: Therefore the vinyl post is, according to this picture, also further onto your side.

MR.CAI: Yes.

THE COURT: Okay. That's --

MR.GOLDEN: But, your Honor, the two surveys that we're showing you clearly indicates that the vinyl fence is to the north of the property line onto my client's

property. The other problem, your Honor, is that MR.Cai's survey clearly is not certain as to the overlap if, in fact, there is an overlap.

He's saying plus or minus and we're talking about an inch to two inches at most. There's one indication that the fence is to the south by one inch plus or minus and the other by 2 inches plus or minus, but that's only on one section of the fence. The other fence shows that it's to the north onto my client's property.

Your Honor, before we appeared before you, I tried to get an understanding of what MR.CAI's position is. Obviously, we're not interfering with his use of the property in any way, shape or form. In his papers he seems to indicate that he's concerned that he would lose a portion of his property.

Your Honor, we have no problem in stipulating that we're making no adverse claim to any portion of his property, but in light of the work that we did on the property line and the efforts that we did to get a survey and the de minimis if, at any, encroachment onto the neighboring property, that to give the plaintiff $5,000 plus taking down the wall, it creates undue hardship on the part of my client.

And quite frankly, your Honor, my two surveys dispute his survey, which is on its face ambiguous, indicating that this measurement is plus or minus, plus or minus what. We're only talking about an inch or two. So it's very possible I'm sure if we had his survey in court, which we don't, his survey may acknowledge that he could have been off two inches.

MR.CAI: Judge.

MR.GOLDEN: So at this point he's failed to establish that there has been any encroachment. But as I said, your Honor, we have no problem in stipulating to the

Court that we make no claim of adverse possession to any portion of the property south of the property line between the plaintiff and the defendant.

MR.CAI: Judge.

THE COURT: Go ahead.

MR.CAI: My key point is key number 2.6. If we insist --

THE COURT: Start over again.

MR.CAI: My point is I need a latitude 2.6 feet away from my house. That is the key number match five surveys.

THE COURT: Right.

MR.CAI: We wasted in on the other 2.6 feet which can draw that line and my fence can restore.

THE COURT: Okay. Your concern is that being over onto your property line, on your side of the property line, you're going to lose ownership of that 2-inch approximate strip; is that correct?

MR.CAI: That's correct.

THE COURT: And that's your concern.

MR.CAI: Yes. And the other concern I was discussing before I go to Supreme Court, I consulting a lawyer on the bar association told me that the lawyer also -- a judge called Seco (phonetic) and he told me my guess is correct, because if I'm not bring that case to court he will claim that he occupy this and also I was -- I read it in the law on newspaper. There is that kind of law and resident of gangland occupied the resident, get a piece of the land from city because --

THE COURT: From city.

MR.CAI: Yes. From the city because he occupy that land for ten years and also I notice that --

THE COURT: That's adverse possession. That's what MR.Golden referred to.

MR.CAI: Yes. That another thing I want to point out to Court is there's only survey saying my property line wall only 2.5, only one. The other one is very troubling and illegal. I tell you why. If your -- I show you he has-- if you take a look at survey, title survey, you see the front. He's saying wire fencing and my iron fencing has a gap like a triangle. Can you give -- you have the big size?

THE COURT: I have the survey, yes.

MR.GOLDEN: Which survey we're looking at?

MR.CAI: 2.5 survey.

THE COURT: Which date?

MR.CAI: If you look at survey in the front of the house, he's saying that there is a gap.

THE COURT: There's what.

MR.CAI: He draw triangle, long triangle, 90-degree wire fencing and -- can someone -- I point out and show the Judge. (Court officer handing document to judge.)

MR.GOLDEN: What about that 90 degree?

THE COURT: You're talking about 90-degree angle at the two ends of the property?

MR.CAI: Yes. If you're --

THE COURT: East and west end of your property, right?

MR.CAI: Okay. If you take a look at this picture, there are no gaps. There is no gap.

MR.GOLDEN: No gap.

MR.CAI: Yes.

THE COURT: Let me see. Showing picture now to MR.Golden and it shows no gap between what and what.

MR.CAI: Between vinyl fencing and metal fencing.

MR.GOLDEN: Your Honor, I think what he's saying is metal fence. The vinyl fence was placed in front of the metal fence, right?

THE COURT: Yes. Okay. That's what I was asking about before.

MR.GOLDEN: That vinyl fence was placed on the north side.

THE COURT: On north side.

MR.GOLDEN: Northerly side of the metal fence; is that correct?

MR.CAI: According to survey, draw picture of the triangle, okay. The triangle means you have separation so you make that bottom line.

MR.GOLDEN: Your Honor, I think that the survey shows metal fence and the property line.

MR.CAI: Yes.
MR.GOLDEN: That's the space.
MR.CAI: Take a look here is two lines, okay. Here is property line. Dot. Dot. Okay. And this is the line, narrow one.
MR.GOLDEN: We're not looking at same survey. Which survey are you looking at?
MR.CAI: Your survey.
THE COURT: Albert Bianco.
MR.GOLDEN: Yes.
THE COURT: Albert makes it appear that the metal fence is either astride or slightly to the north of the property line --
MR.CAI: Yes. Also based on the Jamil's response --
THE COURT: -- that is still standing, this metal fence, correct?
MR.CAI: Yes. So according to survey, said there isa gap based on that picture. There's gap. Triangle. And in his response, he also saying that, in his survey.
THE COURT: Either way, according to this survey, the vinyl fence is to the north of the property line.
MR.CAI: Yes.
THE COURT: Which is --
MR.CAI: So right now we don't see any gap.
THE COURT: Okay. With regard to the fence, does it bother you that it stands there other than you think you're going to lose property rights? Is there something else wrong with the fence?
MR.CAI: No.
THE COURT: Okay.
MR.CAI: The point that I want to make here is this survey is troubling and the truth is a fake.
THE COURT: Who's a fake?
MR.CAI: This one.
THE COURT: Which one?
MR.CAI: 2.5 one.

THE COURT: Okay. The Bianco survey you're saying?

MR.CAI: Yes. This one is fake one.

MR.GOLDEN: 2.5 if I'm not mistaken. That 2.5 appears on the plaintiff's property, right to the south of the property line. Is that where that 2.5 notation is?

THE COURT: Yes. It's written on where his house is.

MR.GOLDEN: Right. That has nothing to do with the property line, your Honor. I don't know what that is, but it's not alongside the property line.

MR.CAI: Judge.

MR.GOLDEN: That's on -- that note is on what appears to be the plaintiff's house, the two-story brick house.

MR.CAI: Judge.

THE COURT: Okay. I see both surveys. In MR.Cai's papers, it show 2.6 on one and 2.60 south, and the other one shows 2.7 and one quarter inches as the space between his house and I presume the property line to the north. Okay.

MR.CAI: Also including his --

THE COURT: Bianco shows 2.5 inches south. And let me see the other survey is by A and P, and what does it say?

MR.CAI: 2.6.

THE COURT: 2.6. Okay. Now it looks like it says okay. 2.6 feet.

MR.GOLDEN: Okay. I see it.

THE COURT: All right. So there's some discrepancy there by one tenth of an inch. One tenth of --

MR.CAI: Feet.

THE COURT: Foot.

MR.CAI: Yes. Foot.

MR.GOLDEN: Little over.

THE COURT: Yes.

MR.CAI: Okay, Judge. I already made this clear in 2.6 foot -- feet. My English is not that good. Then I

want to make a point is that one 2.5 survey is a very troubling. I see it's a fake one and I want to prove to you this one is a fake. I want to point out one by one where it is a fake.

THE COURT: Okay. Where is it fake?

MR.CAI: Okay. The first fake one is the vinyl fencing. You see that thinner fine and property line, you see that?

MR.GOLDEN: Are we looking at Bianco's survey?

MR.CAI: Yes. You see that.

MR.GOLDEN: Quick look.

THE COURT: Bianco's.

MR.GOLDEN: South of the plaintiff – the plaintiff's southerly property line between the plaintiff and defendant's property.

THE COURT: I don't know what we're looking at. What is it? Bianco's survey?

MR.CAI: Yes.

THE COURT: What are you pointing out?

MR.CAT: Okay. I want you to look at vinyl fence. Vinyl fence.

THE COURT: The vinyl, okay.

MR.CAI: You see that single line? You see?

MR.GOLDEN: Single line in the back of the property.

THE COURT: With the dots on it.

MR.CAI: Yes. Not very. Then you see on the back end there is just same point, but at the front end you see 90-degree. You see the separation property line where vinyl fencing line has a separation. You see it?

THE COURT: Right.

MR.CAIL: Okay.

THE COURT: It says has elevations of 5.88. It appears to me that the vinyl fence slants southward as it goes from west to east.

MR.CAI: Yes. They don't exist based on the photo. There is no gap. There's no gap.

THE COURT: All right. I don't know that it's meant to show a gap per say. It has the metal fence marked

on the western end of the property, which in your photograph I see. I see the old cast not cast iron -- wrought iron fence that's about three -- three to four feet high and to the north of it is the vinyl. There is some gap in between the posts if you want to talk about gaps.

MR.CAI: No. I talk about gap iron fencing and his post.

THE COURT: Whether there is gap or no gap --

MR.CAI: There's no gap.

THE COURT: -- is not of concern.

MR.CAI: Based on survey it shows gap.

THE COURT: Okay.

MR.CAI: You got that?

THE COURT: I got it now.

MR.CAI: That is not based on the truth. That's the one point. Second point I want you to know is, normally if you say property line, you need mark your house how far away from your property line. Do you find that number? No. They don't mark that number. They don't have either eight feet or 7.9 feet from the property line from Jamil's house. There is no such number in there.

THE COURT: Okay.

MR.CAI: You got that?

THE COURT: Got it.

MR.CAI: Okay. So if you take look at all the survey, normal survey, what are they looking for? What are they looking for is 200 feet from 38th Avenue. Take a look at any of the survey. Always take from 38th Avenue to that property line is 200 feet. You got that?

MR.GOLDEN: Two hundred feet.

MR.CAI: Yes.

MR.GOLDEN: I don't see that.

MR.CAI: Not on this survey. Any other survey you have.

MR.GOLDEN: Wait a second.

MR.CAI: Including yours.

THE COURT: How much feet?

MR.GOLDEN: He's saying 200.

THE COURT: On the left side where it says 38th Avenue above there is a stretch of 200 feet.

MR.GOLDEN: Oh. Oh. Okay.

MR.CAI: You see based on your survey.

THE COURT: I think what that means is you see a broken line, that that's representing a large area.

MR.GOLDEN: Right.

THE COURT: Which is not a subject of this survey. That's all.

MR.CAI: No, Judge. Take a look at all other surveys. They all taking landmark from 38th Avenue. Take a look at any of five surveys you have. You got that?

THE COURT: Yes.

MR.CAI: Explained to you why he's 38th Avenue point. You got that he's not indicating 38th Avenue landmark.

THE COURT: Okay.

MR.CAI: You got that?

THE COURT: No landmark. Okay. You have any more points to be made?

MR.CAI: Any other. Always start from 38th Avenue, 200 feet down to the property line. Take a look. Only one is trouble one. Noting that point.

THE COURT: On the island wide survey New York papers, MR.Cai, it also shows 200 feet. They both show 200-feet to the property line between you and Uddin.

MR.CAI: Yes.

THE COURT: So I don't know what 200 feet has to do with it.

MR.CAI: That's the vinyl.

THE COURT: Two survey shows 200 feet from 38th Avenue to the line separating you and him.

MR.CAI: Yes. And all other survey is 175. Still 200 feet from 38th Avenue. Everybody taking that landmark. I tell you why he not taking that for

technical point of view. Okay. When I found out that a problem has the -- when I found out he get a response -- I found out trouble survey, I went to surveyor and to see why. They told me yes, technically has an error margin. Error margin is quarter inch.

MR.GOLDEN: Objection, your Honor. You can't have MR.Cai testify as to what the surveyor told him.

THE COURT: Yes.

MR.CAI: Okay.

THE COURT: This is what you're saying they said. Okay.

MR.CAI: Just mess.

THE COURT: You're saying quarter inch.

MR.CAI: Yes. That number is not I make. I ask -- I have two surveyors I ask about. They told me possibly they possibly make a mistake. Even though in the --

THE COURT: Okay.

MR.CAI: But the maximum error is quarter inch, never over that. I tell you why this guy not taking from 38th Avenue.

THE COURT: All of this you're saying is why MR.Bianco's survey is fake?

MR.CAI: Yes.

THE COURT: Got the point. What else? Anything else? It's getting late.

MR.CAI: Okay.

THE COURT: I had a long day.

MR.CAI: I can give you why reason from A to B. You pencil mark A to B, your error is one plus pencil A to B. One dot error maximum. The B to C you have two dots maximum error. C to D more. But from A to E you only have one dot error and that is called a change error. He tried to make up the case to thinking to my property from

quarter --

THE COURT: From what?

MR.CAI: Make that type of error.
THE COURT: For how much feet you said?
MR.CAI: Two -- he getting it 2.5. He would try to get 2.5.
MR.GOLDEN: Who's trying to get 2.5?
MR.CAI: He not taking from 38th Avenue. He taking other side of the road and reference the whole value, bunches of points and get it down to that here.
THE COURT: Okay.
MR.CAI: You understand what my point?
THE COURT: You are saying because he didn't have the proper measurement from 38th Avenue, he could be off by a point.
MR.CAI: Yes.
THE COURT: Point 1 feet.
MR.CAI: Okay. You get that point. Another point is his survey, he's saying 2.5 feet, but take a look at my motion picture on Exhibit M. Motion paper Exhibit M.
THE COURT: M as in Mike.
MR.CAI: M in Mike. You see red mark.
THE COURT: Wait. I'm looking for it. Correct. Red dash.
MR.CAI: You see is orange one. Orange one is 2.6 feet.
MR.GOLDEN: I'm going to object, your Honor. I don't know who marked that. Who measured that? Who made the orange marking? And we have no way of establishing --
MR.CAI: No. No.
MR.GOLDEN: -- what that is.
MR.CAT: I tell you. That red mark is – Jamil knows.
THE COURT: Is Jamil, MR.Uddin's son?
MR.GOLDEN: No. Mohammed Jamil Uddin.
THE COURT: Oh, I see. Okay. It is the same person. The defendant. You're calling him Jamil. That's his middle name. Okay.

MR.CAI: From the picture photo you can see that difference is 2 inch. And red one he says is property line. From their survey he said the difference is only point of one feet. Point of one feet. One point is 2 inch -- not a 2 inch. They are 0.8-inch difference.

THE COURT: All right. In this photograph with the tape what side of the fence is this on? Your side.

MR.CAI: My side.

THE COURT: Okay. And you're saying there's a red mark --

MR.CAT: Two inch.

THE COURT: -- MR.Uddin made. What does it represent, that red mark --

MR.CAI: Red mark.

THE COURT: -- according to you?

MR.CAI: Jamil told me is his survey, the property line mark --

MR.GOLDEN: Your Honor, it would --

THE COURT: One on the top?

MR.CAI: Orange.

THE COURT: Or --

MR.CAI: Orange was my survey of cut.

THE COURT: -- as the property line?

MR.CAI: Yes.

THE COURT: And so I still don't see what the problem is. Looks like the fence is laying on the property line.

MR.CAI: Yes.

THE COURT: At the edge of it.

MR.CAI: Yes. My motion is remove the post. I didn't say his fence.

THE COURT: Are you saying the fence is on the north of the property line, but the post impinge upon your property?

MR.CAI: Two inch.

THE COURT: It's the post. So you want the post moved back two inches. Okay. Post. So wherever

there is a post, that little bit of land is being taken from you.

MR.CAI: I tell you why. The post is orange square.

THE COURT: Yes.

MR.CAI: He knows where my property line. He cross The R, intentionally cross the line, but he put his fence no more than you put into the middle of the post right by common sense if your post is in your property, you will put your fence at middle of the post.

MR.GOLDEN: Your Honor, can I just clarify, if I may.

THE COURT: MR.Golden.

MR.GOLDEN: Just so I understand. The fence I understand -- if I understand MR.Cai, is on the north side of the property line. It's just that the post itself that you're saying encroaches. Your Honor, this would not be adverse possession. If there's slight encroachment of an inch or two inch of four inch post that clearly is not adverse possession.

THE COURT: Okay. Thank you. Anything else or that's the gist of your entire case, correct?

MR.CAI: Yes. My problem is I know the ten years ago and he insist that property --

THE COURT: What happened ten years ago what?

MR.CAI: The tenant occupy the lawn.

MR.GOLDEN: I think he's talking about adverse.

THE COURT: Ten years.

MR.CAI: He insist he is not crossing the line.

THE COURT: Okay. I got the picture. We got all of that. Okay.

MR.CAI: Right now I want my fence put back. Unless his post is completely moved out; otherwise, I cannot put my fence back.

THE COURT: Got it. Okay. I'm going to take that. Anything else, MR.Golden?

MR.GOLDEN: The only thing, your Honor, is that

apparently in both of the plaintiff's exhibit and defendant's exhibit, we have original agreement between the parties.

THE COURT: Right. I see that in both papers.

MR.GOLDEN: And they acknowledge that the property line is along the edge of the sidewalk and there's been no testimony, no evidence that any part of the sidewalk was encroached upon. Now even if the property line was an inch or half an inch to one side or the other of that sidewalk, the fact of the matter is the parties acknowledge that that was the demarcation, and my client relies upon this agreement that MR.Cal signed, constructed the fence.

THE COURT: The wall that was put in eight inch wall on which vinyl --

MR.GOLDEN: That was the north of the sidewalk.

THE COURT: That is aligned with the existing sidewalk.

MR.GOLDEN: Correct.

The COURT: Okay. All right. Just want to get it. of the sidewalk.

MR.GOLDEN: That's right.

THE COURT: MR.Cai.

MR.CAI: Okay. I want to make another issue. He provide the Court a fake document.

THE COURT: Say again.

MR.CAI: He provide the Court fake document. I show you. Original agreement is this paper -- of this paper.

THE COURT: Right.

MR.CAI: Do not have.

THE COURT: I see the copy in your papers.

MR.CAI: Yes. Don't have the cut. He draws cutline later. Modified it. It's not I sign. These original papers --

THE COURT: Let me see. Let MR.Golden see the original. What I have is copy that's in your papers; is that the original?

MR.CAI: I want it here.
THE COURT: Is this the copy?
MR.CAI: Yes. Copy.
THE COURT: All right. You're saying he altered it.
MR.GOLDEN: Your Honor, between the two signatures, there appears to be some drawing, but the language was not altered. Quite frankly this drawing --
THE COURT: Everything else appears the same. Yes, the words.
MR.CAI: Yes.
MR.GOLDEN: These lines don't seem to have any significance. I don't know what it means.
THE COURT: In the original is just a straight line.
MR.CAI: Yes.
THE COURT: Down the middle of the page separating the two signatures.
MR.CAI: Another -- not the mark, the curve.
THE COURT: Now the copy that MR.Golden has attached to his opposition papers, it appears that there's embellishment and the letters CL are written at the top, and bottom of what could be something that indicates anything, a sidewalk, a fence, but do you have any idea what that is?
MR.GOLDEN: I have no idea, and quite frankly the only reason I'm bringing this to your attention is for the purpose of reviewing the first paragraph where the parties acknowledge property line along the edge of the sidewalk. For if we're offering this into evidence, I have no objection to excluding whatever that --
THE COURT: Right. It may have been somebody's idea of doodling, I don't know.
MR.CAI: I want to point out in his response, make a lot of fake claim and even no physical evidence.
THE COURT: Okay. Made a claim about water and mud running over.
MR.CAI: Yes. Water is nature down 38th Avenue little higher. Thirty-seventh Avenue little down.

Everybody go down this way, but not in Jamil's house. My house never run water into his property. No way. I show you the photo. He build 3 inch tall curve already. Take a look at the back. The back curve is one and a half inch lower than the curve. Water go to where. Water go to next neighbor. Form wide open to front. Water go where. Water go to front. How could water jump over the curve?

THE COURT: Okay. Show MR.Golden.

MR.GOLDEN: Your Honor, the curve that MR.Cai is talking about is what we've already testified. The curve and the fence were constructed subsequent to this agreement. The curve was papers we referred to, 6-inch high curve, and in the fence was on top of that curve.

THE COURT: You're talking about the old one?

MR.CAI: There was no curve originally. That 6-inch curve is new construction and that was built at the same time the fence was put up.

THE COURT: Okay.

MR.GOLDEN: If you look at the old photographs of the chain link fence you'll see there was no curve.

THE COURT: Well, it looks like there was some sort of curve being made, inch, two inches high with the old fence.

MR.GOLDEN: The new one was 6 inches.

THE COURT: That was taken down with the fence because it looks like it was crumbling any way and it was taken down, replaced by this higher new concrete curb.

MR.CAI: So where water go to Jamil's house?

THE COURT: Okay. Get your point.

MR.GOLDEN: There's no indication that this curve is in dispute. Nobody is indicating that the curve is in --

THE COURT: He's saying that MR.Uddin's statement, that water was running into his property isn't so.

MR.GOLDEN: Well, we're not here on that issue. We're here on different issue.

THE COURT: That's all he was saying. Okay. I tell you I'm taking these photographs in and consider them. They do elucidate somewhat some of the problems. We'll mark them as court exhibits and we'll come up with a decision for you.

MR.GOLDEN: Your Honor, do you want to keep those original surveys?

THE COURT: Do you want me to?

MR.GOLDEN: If --

THE COURT: I see I compared them to what I have.

MR.GOLDEN: I'll take them back.

MR.CAI: Judge, may I speak a few minutes to summarize.

THE COURT: Okay. Summarize.

MR.CAI: Okay.

THE COURT: Few minutes though.

MR.CAI: Few minutes.

THE COURT: That's key word.

MR.CAI: Jamil in the whole along the way, he play a lot of trick to me and he sometimes -- friend sometimes threatened me saying he can shot me for many reasons, and since I'm not living there and he told me for pain severe special money, you will get a survey in five of yours and he also claim that he know the commissioner and get a special permission to build his house.

MR.GOLDEN: Your Honor, I'm going to object.

THE COURT: Sustained.

MR.CAI: Okay.

THE COURT: All of this is hearsay. He's not here to testify. We're talking about this. If you got other problems, if you think you're -- he's going to kill you, you call the police.

MR.CAI: Okay. So my point is in this one, no matter how problem, you know, no matter how money you have, you should follow the rule. You can't do anything you want. They want to make that point.

THE COURT: Got it.

MR.CAI: Clear.

THE COURT: Point made. Okay. We'll study the matter and you'll hear from us.

* * **

This is certified to be a true and accurate transcript of the above-mentioned transcript.

S/N TAJUANA WILSON, RPR OFFICIAL COURT REPORTER

Exhibit A: !!Format: No Gap!!

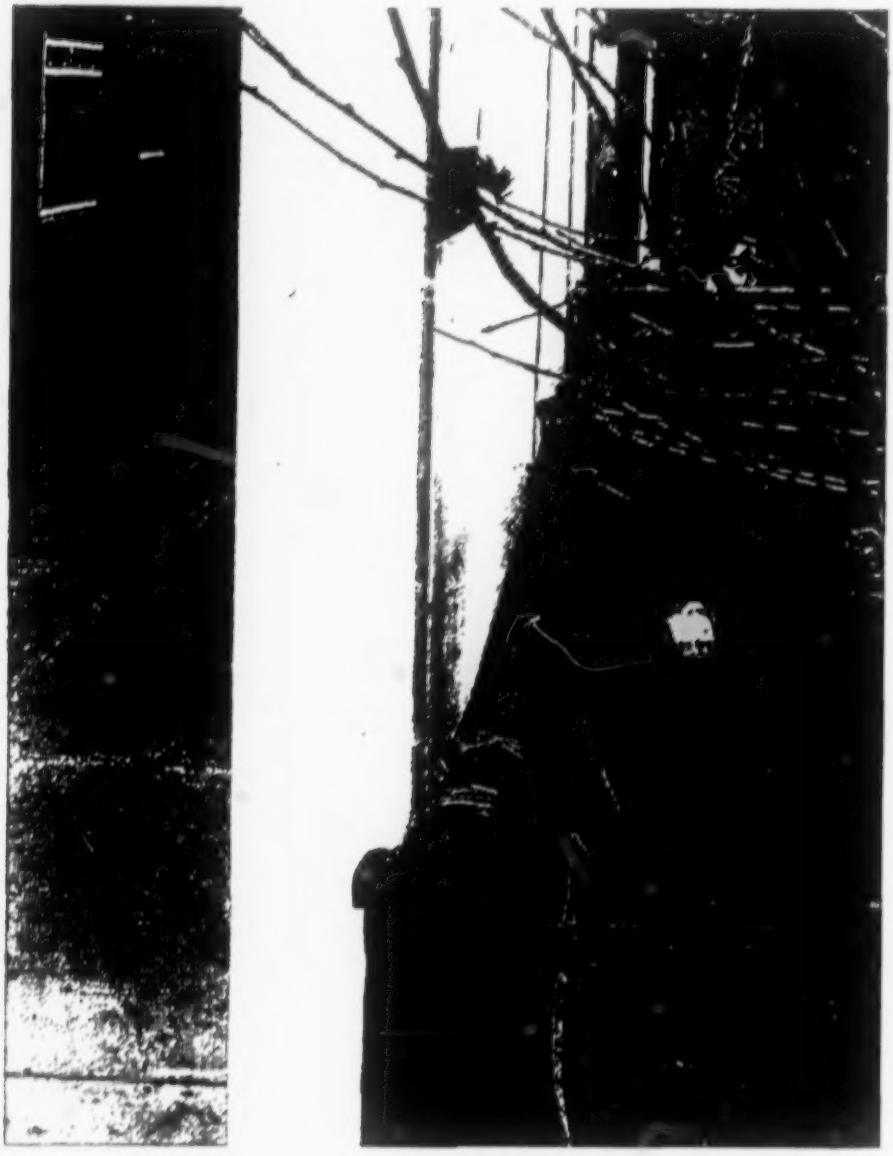


Exhibit B: !!Format: right one!!

Exhibit C: !!Format: middle one!!

Exhibit D: !!Format: left one!!

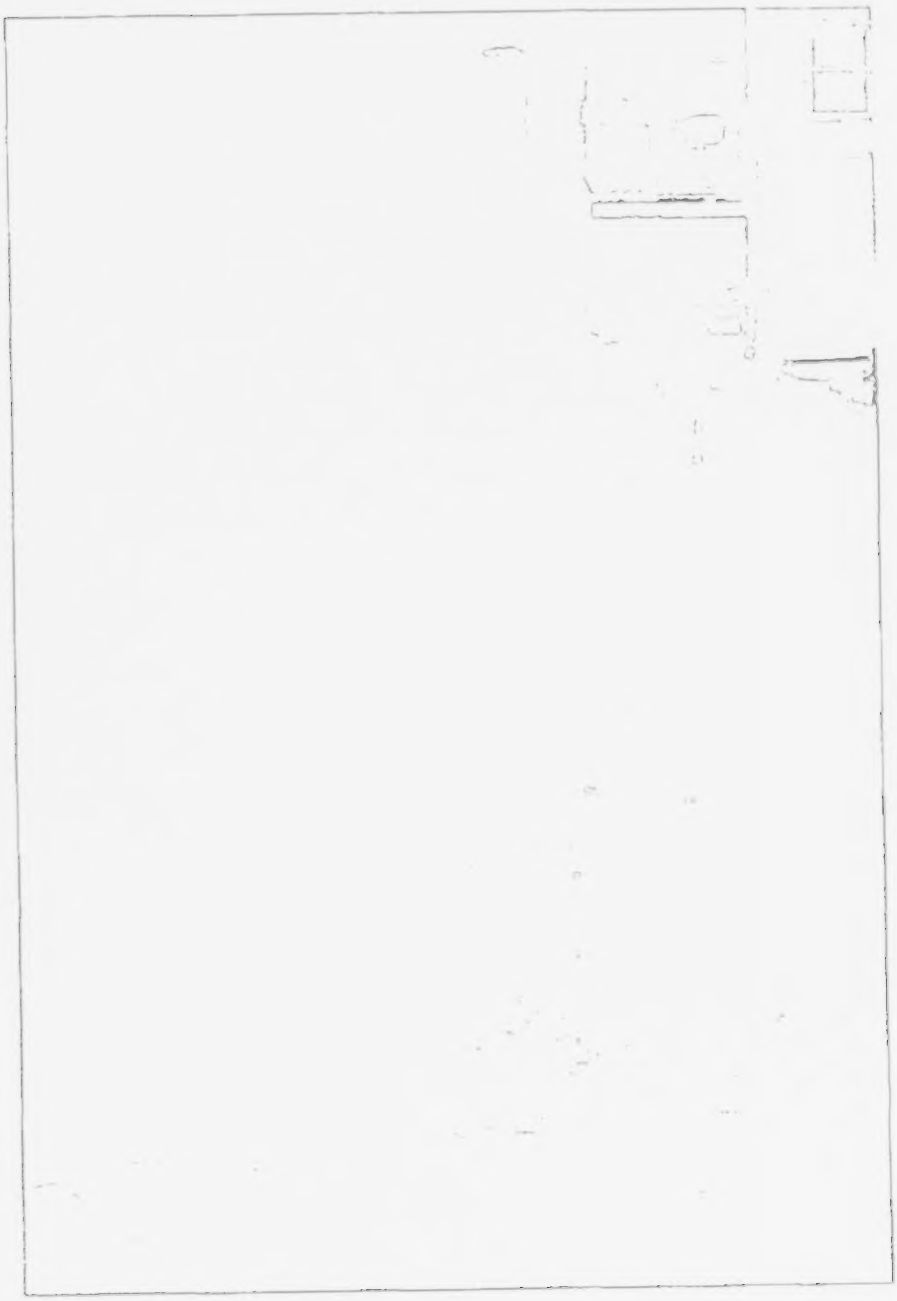
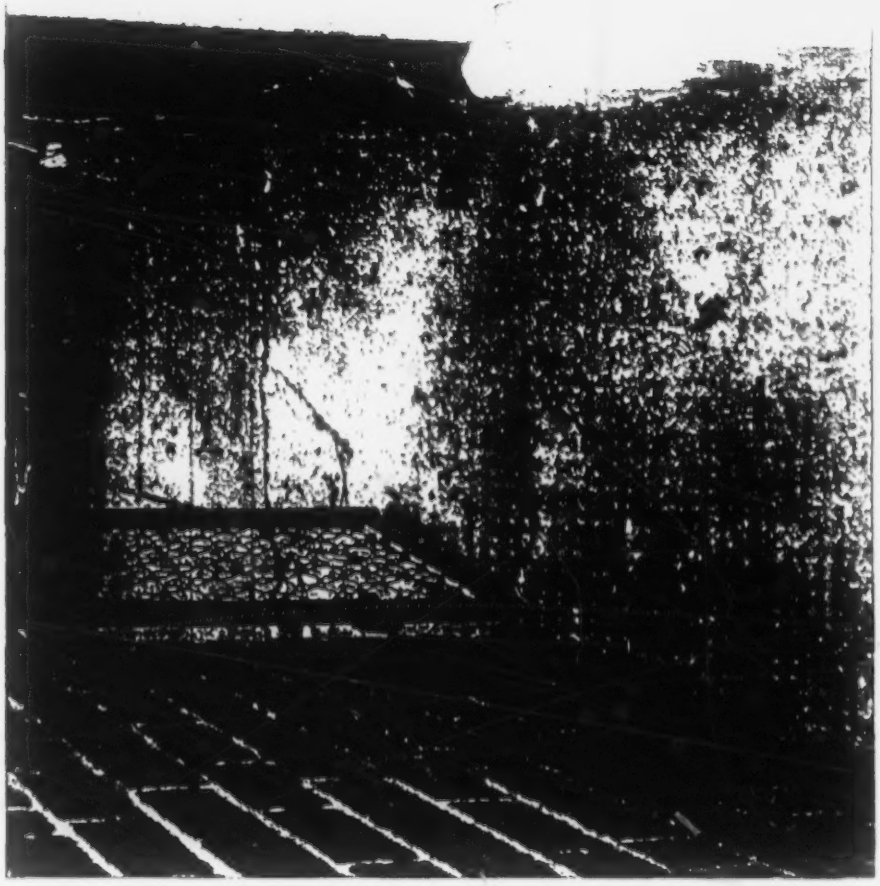


Exhibit E: !!Format: water!!

Exhibit F: !!Format: water!!



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